



CAPT^N. GORDON,
Royal Navy.

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PRINCIPLES AND PRACTICE

OF

NAVY AND MILITARY

COURTS MARTIAL

WITH AN

APPENDIX

RELATIVE TO THE SUBJECT

BY JOHN MARSHALL ESQ.

OF THE ADVISORY COUNCIL OF THE ARMY AND NAVY
AND OF THE ADVISORY COUNCIL OF THE ARMY AND NAVY
AND OF THE ADVISORY COUNCIL OF THE ARMY AND NAVY

THE SECOND EDITION

WITH AN APPENDIX RELATIVE TO THE SUBJECT

AND A LIST OF THE CASES

AND A

LIST OF

THE ADVISORY COUNCIL OF THE ARMY AND NAVY

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Capt. M. Gordon M.
PRINCIPLES AND PRACTICE

OF
NAVAL AND MILITARY
COURTS MARTIAL,

WITH AN
APPENDIX,
ILLUSTRATIVE OF THE SUBJECT.

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Late Secretary to Admiral Lord Viscount Hood, &c.
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the American War,
And Author of "Financial and Political Facts of the Eighteenth
and present Century."

THE THIRD EDITION,
On an entire new Plan, with considerable Additions and Improvements,
IN TWO VOLUMES.

VOL. II.

LONDON:

Sold by J. BUTTERWORTH, in Fleet-street; T. EGERTON, Whitehall;
R. FAULDER, Bond-street; W. MILLER, Albemarle-street; and
Messrs. RICHARDSONS, Cornhill.

1806.



Strahan and Preston,
Printer's Street.

PRINCIPLES AND PRACTICE
OF
NAVAL AND MILITARY
COURTS MARTIAL.

B O O K II.

OF THE PRACTICAL PROCEEDINGS IN BRINGING
OFFENDERS TO TRIAL—ASSEMBLING OF THE
COURT—ARRAIGNMENT OF THE PRISONER—
EXAMINATION OF WITNESSES, AND DOCTRINE
OF EVIDENCE—JUDGMENT, AND EXECUTION.

C H A P. I.

*Of the Arrest of Offenders, of Accusations, and the
Forms of Procedure preparatory to Trial.*

I N the preceding part of this work, we have
sketched the outlines of the theory, united to
practice, of regular naval and military courts mar-
tial, as established by acts of parliament also by
the mutiny act and articles of war, and as directed
by his majesty's printed regulations, and by the
printed instructions, and corroborated at different
periods by the opinions of counsel; we have also en-

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deavoured to point out the coincidence or variance in the forms of constituting naval and military courts martial, with comparative illustrations of the punishments annexed to crimes by the common and statute law of England: it now only remains to enter into a detail of the forms and proceedings, and in treating of them in this and the subsequent chapters, it shall be our endeavour to adhere to as much brevity as the subject will admit, without losing sight of order and perspicuity.

Previous to any complaint or accusation by the commanding officer of the ship, it is supposed that the offender is under arrest, or in custody. Although the naval articles of war, nor the statutes 22 Geo. II. cap. 33. and 19 Geo. III. cap. 17. do not specify the form or nature of arrests previous to trial, yet the mode is well understood by the immemorial usage of the service. It depends upon the rank of the accused, and the degree or measure of the crime with which he stands charged *. Should

* The articles of war for the army, 1804, sect. 16. art. 20. direct, that whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, be put in arrest, if an officer; or if a non-commissioned officer or soldier, be imprisoned, until he shall be either tried by a court martial, or lawfully discharged by a proper authority. According to the ordinary practice of the courts of law, offenders, whether principals or accessaries, must (in bringing them to justice) be first arrested or apprehended; secondly, imprisoned or discharged upon bail; thirdly, indicted.

These

Should an officer be accused of a capital crime, or an offence of such a nature as might affect his life, or of which the punishment might bear so heavy upon him as to tempt him to elude justice by escaping; it is the custom to detain him in close confinement. But if the offence be of a more trivial nature, he is allowed to be in arrest at large, that is to walk the deck without interfering in the duty on board; or he may be even allowed to go on shore without his sword, on his word of honour to wait the issue of a trial, or until his enlargement.

As the privation of liberty is of itself a punishment, it ought to continue as short a time as possible. Imprisonment being only the means of securing the person of the accused, until he be tried, condemned, or acquitted, ought not only to be of as short duration, but attended with as little severity as possible. The time should be determined by the necessary preparations for the trial, and the right of priority in the oldest prisoners. The confinement ought not to be closer than is requisite to prevent the prisoner's escape, and the trial should be concluded with all possible expedition. And in general the rule laid down by Beccaria, and

These modes are nearly adhered to in the army and navy, and though the articles of war make no mention of admitting an offender to bail, yet, when the offence is of a bailable nature, it is the custom of both services to allow the offender to be a prisoner at large.

other writers on criminal law, ought to be attended to, viz. "*The degree of the punishment, and the consequence of a crime ought to be so contrived as to have the greatest possible effect on others, with the least possible pain to the delinquent* *."

The master at arms, who acts as provost-marshal in the fleet, is to take charge of every prisoner, and to keep him in safe custody until he is duly authorized to release him. Previous to the day of trial he receives his warrant (to be hereafter noticed) to officiate as provost-marshal for which he is paid at the rate of four shillings *per diem*, during the time he may have such prisoner in his charge.

Although it be an admitted doctrine in the army, that a prosecution may be brought in a court martial at the instance of a person who is himself not subject to military jurisdiction, provided the of-

* A great latitude is given for the time of confinement of officers or men to be tried by naval courts martial, and it is to be hoped this power will not be wantonly abused by commanding officers, but on the contrary ought to be regulated by the dictates of humanity, and the expediency of the service.

By the military articles of war (1804), sect. 16. art. 17. it is decreed, that no officer or soldier who shall be put in arrest or imprisonment shall continue in his confinement more than eight days, or until *such time as a court martial can be conveniently assembled*. The latter part of this article also allows a latitude in the army, which may at times be wantonly abused. But it is a consolation to the mind of an innocent sufferer, that in a free country, under laws wisely framed and faithfully administered, there can be no act of oppression or wrong without obtaining legal redress.

fence

fence be of a military nature, and committed by a person under military law * ; no such refined doctrine has yet, to our knowledge, been recognized in the naval service, but the remedy is equally attainable, as the commander in chief may appoint a prosecutor, and the person injured would be admitted as a witness on the trial.

The particular facts charged, and in what manner committed, with the time and place, are directed to be clearly specified in all complaints for bringing offenders to trial by courts martial †, upon similar principles, as is directed by courts of law in all indictments. This specification of the crime or offence of which a person stands accused is essential to the ends of justice, in order that he may have a fair opportunity of exculpating himself, by contrary evidence of the facts charged, to be adduced in his defence. The *time* may be very material, where there is any limitation in point of time assigned for the prosecution of offenders ‡, as is the case in naval courts martial, by statute 22 Geo. II. cap. 33. sect. 23. which enacts, That no person, not flying from justice, shall be tried or punished by any court martial for any offence, unless the complaint of such offence be made in writing,

* Tytler's Essay on Military Law, p. 211.

† P. Inst. under the head of Courts Martial. Art. 4.

‡ By statute 7 W. III cap. 3. the time for prosecution of offenders at courts of law, is limited to three years, except in case of murder, when the time of the death must be laid within a year and a day after the mortal stroke was given. *Black. Com.* vol. 4 p. 306.

or unless a court martial, to try such offender, shall be ordered within three years after the offence shall be committed, or within one year after the return of the ship into any of the ports of Great Britain or Ireland *.

The *time*, when the act is charged to have been done, should also, if possible, be correctly set forth; more especially if the offence be of a capital nature. Thus the particular day of the month should be assigned, which, with a specification of the *place*, may be essentially necessary to a prisoner's defence; because, if innocent, he will thereby have an opportunity of exculpating himself by the proof of an *alibi*, that is, that he was in a different *place* at the *time* when the crime charged against him is said to have been committed. But, as the crime charged may have been committed, and yet there be a mistake or doubt as to the precise day, the consequences of such a mistake may be guarded against by adding, "or on the day or days immediately preceding, or on the day or days immediately following," or the time may be extended to one of the days of the month immediately preceding or following. The greatest possible caution, however, is to be adopted in using this latitude; indeed, it is to be allowed in those cases alone, where, from the peculiar circumstances, it cannot be avoided.

* By the Mutiny Act (18. 4), sect. 95. no person can be tried for offences against former acts, which were committed three years before issuing the warrant for trial, unless such person has absented himself, &c.

The *place* is necessary to be named, in order to ascertain that the crime was committed within the jurisdiction of the court; also, that the prisoner may have an opportunity to prove in his defence an *alibi*, or being in another *place*, at the time the offence is charged to have been committed.

The offence itself ought to be set forth with clearness, precision, and certainty; and the same rule should be observed in complaints or accusations against offenders, as is practised in courts of law, in indictments *, where, in some crimes, particular words of art must be used, which are so appropriated by the law to express the precise idea which it entertains of the offence, that no other words, however synonymous they may seem, are capable of doing. Thus, in cases of mutiny, the facts must be said to be done “in a *mutinous* or *seditionous* manner.” If an accusation of murder, it is necessary to say, that the party accused “*murdered*,” not killed †. If with an intent to murder, it is necessary to say, “did in a *wilful* and *malicious* manner,” &c. And in all other offences it is a rule to adhere to the words appropriated to them, in

* Black. Com. vol. 4. p. 306. edit. 1791.

† It is necessary to state in indictments for *murder* that the defendant *murdered* the deceased. An indictment for manslaughter merely charges that the deceased feloniously *slew* or *killed* the deceased. And death by misadventure or chance medley, is charged to have been done *casually and by misfortune, and against the will of the defendant*. Black. vol. 4. p. 307, &c.

the act of parliament, or different articles of war under which they fall *.

It is also necessary, in all accusations, that the name, surname, rank, or station, and the ship or regiment to which the offender may belong, should be clearly specified †. Should a misnomer, through hurry or inadvertency have taken place, and that it is discovered on assembling the court martial for his trial, by its discordance with the muster books, or otherwise, it is usual to keep the prisoner under arrest; and, after the charges have been preferred of new, with his name correctly specified, a court martial may afterwards assemble for his trial on the specific charges originally brought against him.

The same rule should be observed, in case the person to be tried was charged with the murder of the deceased, whose christian or surname might, through inadvertency, be mistaken;—for instance, charging the prisoner with murdering *John* instead of *William*, the real christian name; or *Roberts* instead of *Robinson*, the real surname of the deceased. These, with many other distinctions in indictments, as laid down by writers on criminal laws, however minute or refined they may appear, ought not to be overlooked in articles of accusation brought

* Vide Letters of Complaint and Accusation. Appendix, No. XXIII.

† The christian and surname of the defendant, with his state and station, were first required to be set forth in the indictment, by 1 H. V. c. 5.

before members of a court martial. We have instances daily of the technical forms of our criminal laws sheltering delinquents from punishment, and saving them from the penal consequences of their crimes.

Thus we perceive the ends of justice may be sometimes partially defeated by the forms of law, when opposed to its substance. Yet they are so blended and interwoven with substantial justice itself, that forms of law cannot be violated, without ultimately injuring, and perhaps destroying the whole texture of our criminal jurisprudence; and although the individual guilty may occasionally escape, yet, by a rigid adherence to established forms, public happiness and security are effectually secured.

All accusations or indictments should contain a distinct specification of the circumstances attending the crimes committed. But there are some offences in the articles of war where, in particular, this rule should be strictly adhered to.

For instance, the 33d article ordains, that, "if any flag-officer, captain, or commander, or lieutenant belonging to the fleet, shall be convicted before a court martial, of behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner, *unbecoming the character of an officer*, he shall be dismissed from his majesty's service."

In

In an accusation grounded on this article, it would be injustice to the prisoner to try him on a general charge of *behaving in a scandalous, infamous, cruel, oppressive, and fraudulent manner, unbecoming the character of an officer*, unless the particular circumstances of such behaviour were clearly *defined, and the time and place distinctly specified*.

In the articles of war for the army (1804), we find by section 16. art. 26. that “whatsoever commissioned officer shall be convicted before a general court martial of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from his majesty’s service.”

To this article is subjoined the following clause: “Provided, however, that in every charge preferred against an officer for such scandalous or unbecoming behaviour, the fact or facts on which the same is grounded shall be clearly specified.” Thus we perceive, the framers of the articles of war for the army have wisely enjoined, that the accusation shall contain a distinct specification of the facts.

The nature of the misbehaviour should not only be clearly defined, but the *time* and *place* should also be distinctly specified; and it is also considered to be not only regular, but *indispensible*, that the fact or facts, to which that predicament is intended to apply, should be expressly assigned, before a prisoner is put upon his trial.

In

In Great Britain or Ireland, any complaint or accusation in the navy, is to be transmitted by the commander in chief, or senior officer, to the lords commissioners of the admiralty, who thereupon issue an order or commission * for assembling a court martial to try the party accused; and the order may be directed to the first, second, or third in command, as may be found most expedient, and for the good of his majesty's service †; and such flag-officer or captain so directed, shall preside at such court martial. In time of actual service, the lords of the admiralty have even found it expedient to transmit blank orders to the commander in chief at any of the ports, empowering him to *fill up the blanks* in the order, with the date and address of the officer who should happen to be second in command; or if the exigency of the service required it, he might fill it up in the name of the third in command, instead of the second; and having so done, he was instructed to acquaint the admiralty thereof, that the books of the office might be made to correspond with the orders so filled up ‡.

But if in foreign parts, and the commander in chief, or senior officer, should be under the necessity of presiding, the order for assembling a court mar-

* Vide Order for assembling Courts Martial, No. XXIV. sect. 1.

† St. 22 Geo II. cap. 33. sect. 11. App No. II.

‡ In the American war Admiral Sir Thomas Pye commanding at Portsmouth had directions to the above purport.

tial differs a little in the form from that issued by the admiralty at home, or by a commander in chief to the second or third in command on foreign service *.

By section 16. art. 1. military articles (1804), it is enacted that a general court martial in the united kingdom of Great Britain and Ireland shall not consist of less than thirteen commissioned officers: and the president of such court martial shall not be the commander in chief, or governor of the garrison where the offender shall be tried, nor be under the degree of a field officer. By article 2. a general court martial held at Gibraltar or other places beyond the seas, shall not consist of less than thirteen commissioned officers, except the same shall be holden in Africa or New South Wales; in which places a general court martial may consist of any number of commissioned officers, not less than five, and the president shall not be under the degree of a field officer, unless where a field officer cannot be had; nor shall the president in any case whatever be the commander in chief or governor of the garrison, nor under the degree of a captain.

For preventing disputes which may arise between officers of the life-guards or horse-guards, and officers of the foot-guards, in relation to their holding of courts martial, and upon other points of

* Vide Order for assembling Courts Martial. Appendix, No. XXIV. sect. 2.

duty, it is declared by section 16. art. 3. That when it shall be found necessary to bring any officer or foldier belonging to the said regiments of life-guards or horse-guards before a general court martial, for differences arising purely among themselves, or for crimes relating to discipline or breach of orders, such courts martial shall be composed of officers serving in any or all of those corps (as they may then happen to lie for their being most conveniently assembled), wherein the officers are to take post according to the dates and degrees of rank granted them in their respective commissions, without regard to the seniority of corps, or other formerly pretended privileges.

In like manner also the officers of the three regiments of foot guards, for differences arising purely among themselves, or for crimes relating to discipline or breach of orders, shall of themselves compose courts martial, and take rank according to their commissions; but for all disputes or differences which may happen between officers or soldiers belonging to the said corps of life-guards or horse-guards, and officers or soldiers belonging to the foot-guards, or between any officers or soldiers belonging to either of those corps of life-guards, horse-guards or foot-guards, and officers or soldiers of any other of his majesty's forces, or among officers or soldiers of his majesty's other troops, but belonging to different corps, the courts martial to be appointed in such cases shall be equally composed of

of officers belonging to the corps in which the parties complaining and complained of do then serve, and the president shall be taken by turns as nearly as the service will with convenience admit, beginning first by an officer of one of the regiments of life-guards, and so on in course out of the other corps, according to the seniority in rank of such corps respectively *.

No officer serving in the militia shall sit in any court martial upon the trial of any officer or soldier serving in any of his majesty's other forces, nor shall any officer in the other forces sit in any court martial upon the trial of any officer or soldier serving in the militia †.

The members both of general and regimental courts martial shall, when belonging to different corps, take the same rank which they hold in the army ; but when courts martial shall be composed of officers of one corps, they shall take their ranks according to the dates of the commissions by which they are mustered in the said corps ‡.

The provisions of the mutiny act, extending both to the land forces and marines, it is declared, that in matters wherein any of his majesty's marine forces may be interested, the officers of the ma-

* Military Articles (1804), sect. 16. art. 3 and 4.

† Ibid. art. 5.

‡ Ibid. art. 6.

rines shall be associated with the officers of the land force, for the purpose of holding courts martial: and that the members of the court so composed shall take their rank according to the seniority of their commissions in either service*.

It is likewise provided, that when any of his majesty's land forces are employed in the East Indies, courts martial may be there assembled, composed jointly of the officers in the service of the united East India Company, and of his majesty's land forces; with this distinction, that when the trial is of any officer or soldier of the said land forces, regard shall be had to the regulations of the British mutiny act; and when the trial is of an officer or soldier in the service of the East India Company, regard shall be had to the regulations made in pursuance of the act, 27 Geo. 2. for the punishment of offences committed by officers or soldiers in the service of the said East India Company†.

We have already particularly noticed in a preceding chapter, that artillery officers, and those serving in the royal corps of engineers, and officers in the corps of royal military artificers and labourers, and all master gunners and gunners in the service of the ordnance, are amenable to courts martial, and that artillery officers shall sit in courts

* Mutiny Act (1804), sect. 19.

† Ibid. sect. 20.

martial,

martial, with officers of other corps, taking rank according to the dates of their respective commissions*.

In the absence of the judge advocate for the fleet, or his deputy, it is usual for the officer, who is directed to assemble the court martial, in this stage of the procedure, to nominate some person to officiate as judge advocate on the occasion†; and in which appointment, according to the construction of the statute already mentioned, a majority of the members, when the court is assembled, should concur‡.

The president likewise appoints a person to officiate as provost-marshal on the occasion, who is to take the party accused into custody, to produce him at the time of trial, and to keep him until he shall be delivered by due course of law||.

The commander in chief issues memorandums of notice or summonses, to the respective flag-officers and captains of the ships of the squadron, then and there present, announcing a court martial to be held on board of a particular ship, on a stated day§;

* Mutiny Act (1804), sect. 82.

† Vide Judge Advocate's Warrant. Appendix, No. XXV.

‡ Vide Judge Bathurst's Opinion to Quer. 2. Appendix, No. XIV.

|| Vide Provost-Marshal's Warrant. Appendix, No. XXVI.

§ Vide Memorandums and Summonses. Ap. No. XXVII.

at the same time he directs the president to assemble the court at the place and time accordingly, and to give notice to the respective flag-officers and captains, that they may attend in like manner*. He issues likewise a memorandum to the captain of the ship, on board of which the court is to be assembled, that he may make the established signal for a court martial, at the given hour of the day appointed†.

Having in the preceding volume, chapter VI. given in detail the functions of a naval or military judge advocate or deputy, in this place it is only necessary to touch, in a summary manner, upon the duties preparatory to trial, and which are generally analogous in both services.

* Vide Memorandum from commander in chief to president. Appendix, No. XXVIII. sect. 1.

† Vide Memorandum to captain of the ship, where the court is to be assembled; also General Orders issued for assembling a general court martial. Appendix, No. XXVIII. sect. 2. and 3.

Naval courts martial generally assemble at eight or nine in the morning, and an excellent mode has been lately adopted of making the signal an hour previous to the assembling of the court, that no delay may be incurred.—See Captain of the Fleet's Memorandum. Appendix, No. XXVII. sect. 3.

Army courts martial are not by law allowed to sit longer than seven hours a-day, and no court can be assembled before eight o'clock in the morning, or sit latter than three o'clock in the afternoon, unless in cases which require an immediate example. Articles of war for the army (1804), sect. 16. art. 10.

The judge advocate, or the person appointed to officiate upon that occasion, is to give the person accused timely notice of his intended trial, and an attested copy of the charge or accusation exhibited against him, that he may prepare for his defence; and he should likewise summon the several witnesses (being persons subject to the jurisdiction of the admiralty, or persons subject to military law) who may be called upon to give evidence, either in support of the charge, or in defence of the party accused *.

But as it frequently happens at courts martial, that there are witnesses on both sides, whose evidence may be essential for the elucidation of truth in the trial at issue, and who are not subject to naval or military authority; in such cases summonses are issued to them as to other witnesses, and in general from their own voluntary disposition, they give their attendance. But in the event of a refusal, such witnesses may, by an attachment in the court of king's bench in England or Ireland, be compelled to attend at any military court martial, upon being allowed their travelling charges, and a reasonable compensation for loss of time †.

* Vide Naval Judge Advocate's Letters and Summonses to Prisoner, Prosecutor, and Witnesses. Appendix, No. XXIX. sect. 1, 2, 3, 4, and 5. Form of Military Judge Advocate's Summonses to Witnesses. Appendix, No. LXI.

† Mutiny Act (1804), sect. 18.

We are sorry, however, to find that it does not appear that to naval courts martial the same means of enforcing attendance has been extended by the legislature.

Thus far matters are in a regular train preparatory to trial; but should it so happen that the president may be taken ill in the intervening time, and that it is necessary, upon that account, to postpone the trial until a future day, the judge advocate must announce the circumstance of the president's indisposition to the prosecutor and party accused, that directions may be given to the evidence on both sides, to attend the court on the new day appointed, instead of that in the former summons*.

• Vide Judge Advocate's Letter upon the occasion. Appendix, No. XXX.

CHAP. II.

Of the legal Forms of Procedure in assembling and constituting a Court Martial.—Arraignment of the Prisoner.—Pleas in bar of Trial.—Competency of Witnesses.

IT is necessary to premise that when all the officers who are to constitute the court are assembled at the time and place appointed ; and if any member has absented himself through ill health, the same is to be minutely certified to the court ; and the surgeon of the ship which such member commands, must attend, that he may attest upon oath, if required, the truth of his inability to attend through ill health *. Should he decline so doing, and the other testimonials deemed inadmissible, the members then assembled may immediately break up, as not being authorised to form a court, or to dispense with the non-attendance of a member not legally excused. The reasons are to be stated in a letter to the Admiralty, signed by all the members assembled for the purpose of constituting a court, agreeably to notice and signal †.

On

* The same rules are usually attended to at military courts-martial.

† A case of this nature happened at Portsmouth, in January 1780, on the non-attendance of Capt. Hamilton, whose surgeon refused

On the other hand, when the testimonials of a member's inability to attend are admitted, the court may be formed, and the judge advocate takes the fact down in the minutes, immediately after the names of the members present, in the form prescribed *.

The preambles to the minutes of courts martial vary a little in form from the circumstances that may arise at the assembling of such courts, and ought to be carefully recorded by the judge advocate. The preamble to the minutes of a court martial, assembled by a senior officer, meeting with five or more ships abroad, differs materially from others, in like manner as his order, already noticed, for assembling the court †.

The members being seated to right and left of the president, according to seniority, and the judge advocate facing him at the bottom of the table, the president is to cause the party accused to be brought into court, attended by the provost-martial; all the witnesses, as well in support of the charge, as in the prisoner's defence, and every other person who shall choose,

refused to attest upon oath, that his attending the court martial would have endangered his health. See Letter to the Admiralty. Appendix, No. XXI.

* Vide Minutes of Proceedings. Appendix, No. XXXI. sect. 1 and 2.

† See Minutes of Proceedings. Appendix, No. XXXI. sect. 3.

being admitted, the judge advocate standing up, reads audibly the order for assembling the court *, and likewise the order or warrant of his own appointment †; he then calls over the names of the president and members who have arranged themselves alternately on the right and left hand of the president, and administers to the respective members the oath prescribed by act of parliament ‡, and afterwards the president of the court administers to the judge advocate the customary oath of secrecy prescribed by the statute ||.

The court being now constituted, the judge advocate reads the letter of accusation or charge against the prisoner.

Then the president of the court should ask the prisoner, “ whether he is guilty or not guilty of the

* Vide Order for assembling the Court. App. No. XXIV.

† Vide Judge Advocate's Warrant. App. No. XXV.

‡ Stat. 22. Geo. II. cap. 33. sect. 16. App. No. II.

|| Ibid. and vol. 1. ch. v. where the forms of administering the oaths at naval and military courts martial are detailed. Having in a preceding part of this work (v. 1. ch. vi.) noticed its being very unusual for the party accused to offer challenges or objections to any member of a naval court martial; yet it is the practice at army courts martial, for the judge advocate, previous to the members being sworn, to demand of the prisoner, whether he has any objection against, or challenge to make, of any of the members present; and if he has, he is required to state his cause of challenge, after which the court is cleared, in order that the members may deliberate on the import and validity of the same.

matter of accusation.” This last form, we are of opinion, is too often omitted at naval courts martial, even on trials for capital offences; although we find it is invariably the practice of our criminal courts, founded on the statute law of the land; and army courts martial, who pay more attention to the minutiae of form, constantly adhere to this rule. As the ends of justice are too often defeated in all our courts, by violating the most trivial forms established by law, it becomes the more necessary for a court martial to adhere rigidly to these forms prescribed by common and statute law.

After the prisoner has been arraigned, he may either 1. *stand mute*, that is, refuse to answer, or he may answer foreign to the purpose. 2. He may confess the fact of which he stands accused; or 3dly, he may admit the act charged, but plead in justification or in mitigation; or he may plead *not guilty* to the charge.

1. Should the prisoner stand mute from perverseness and deliberate design, or answers impertinently and foreign to the purpose, the court will, in the first instance, endeavour to overcome his obstinacy, by wisely admonishing him of the dreadful consequences which await him. If these admonitions fail to have the desired effect, the court must necessarily proceed to pass sentence or give judgment, in the same manner as if he had been regularly found guilty on the most positive evidence.

But should it appear that the prisoner stands mute, from the want of reason, or a natural defect in the faculty of speech, the court ought, in humanity to the prisoner, to *put the most favourable interpretation* on the case, and by presuming that he has pleaded *not* guilty, may proceed on the trial, by examining evidence, &c.*

If a prisoner be totally ignorant of the language in which he is arraigned, or in other words, of the language of the indictment or accusation, it is usual and proper that a disinterested person, skilled in his own language and that of the indictment, should be appointed interpreter between the prisoner and the prosecutor and court. And such interpreter must be sworn to translate truly, and without favour or partiality, the evidence on both sides, after having fully explained to the prisoner, the import and consequence of the charges for which he stands trial †.

* Sir William Blackstone however observes, that it is a point yet undetermined, whether judgment of death can be given against a prisoner who hath never pleaded, and can say nothing in arrest of judgment. Blackstone's Com. b. 4. c. 23.

† The oath administered to an interpreter, may be in the form, and to the effect following: You shall well and truly interpret and translate, in all cases in which you shall be applied to in the course of the present trial; and you shall not communicate or discover to any person or persons any part of the proceedings, until the sentence to be pronounced shall have been approved by his majesty or by the commander in chief. In naval courts martial the latter branch of the sentence may be omitted.

On foreign stations it may sometimes happen that foreign officers serving with the British army, and holding commissions in his majesty's service, may occasionally be interested in courts martial, and unavoidably fit as members. From the imperfect knowledge which many of them have of the English language, the aid of an interpreter to explain the evidence and proceedings of court, will, in such case, be required. But under such circumstances it has been doubted, whether, when the members of the court martial are to deliver their *opinion* on any point, and more especially on the judgment to be pronounced, an interpreter may, in their discretion, be suffered to be present; and if so, what oath should be previously administered to him? A case in point occurred at Dominica (October 1800), where two foreigners, captains in the 9th West India regiment, who understood very little of the English language, were members of a general court martial. The circumstance appeared to the president, and to the other members, to be of sufficient importance to have the case stated to the judge advocate general, for his opinion on the above question; and it appears from that opinion, that as no provision is made relative to an interpreter being present when members deliver their opinions, it would not be advisable to admit of it. The case must very rarely happen, if ever, in which foreign officers may not be able to make their votes understood by some of their brother members, which will solve the difficulty, and the interpreter will be able

able to assist them in every particular, except only that of delivering their opinions *.

2. Should the prisoner, on being arraigned, plainly and explicitly confess the crime with which he is charged, nothing remains for the court but to proceed to the painful duty of pronouncing judgment. In such case humanity will plead strongly in behalf of the prisoner, for a mitigation of the sentence. A free and voluntary confession is deserving of some mercy, because it is presumed to flow from the highest sense of guilt, and therefore it is admitted as a proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is considered as evidence of guilt, that no credit ought to be given to it, and therefore it is rejected in the courts of law†.

3. The two preceding cases of a prisoner standing mute, or voluntary confession of the crime with which he is charged, seldom occurring at trials

* See Case and Opinion. App. No. LXII.

† Emlyn, in his preface to the State Trials, notices the excellencies of the English laws above all others, chiefly to consist in that part of them which regards *criminal prosecutions*; and among other particulars enumerated by him, says, “in other countries *racks and instruments of torture* are applied to force from the prisoner a confession, sometimes of more than is true; but this is a practice which Englishmen are happily unacquainted with, enjoying the benefit of that just and reasonable maxim,—*Nemo tenetur accusare seipsum.*” Emlyn’s Pref. to St. Trials, f. 3.

by

by courts martial, the usual plea resorted to, and which is most desirable, is the unqualified one of *not guilty*.

The rules applicable to pleas in bar of trial before the civil courts of justice, are equally valid at courts martial. 1st, A prisoner may immediately upon his arraignment, and having been formerly tried for the identical offence with which he stands charged, plead this circumstance in bar of the trial, and which may be proved by the sentence, or other satisfactory evidence. 2d, A pardon of the crime for which he is charged, is another valid plea in bar of the trial. 3d, A promise or assurance made to the prisoner of mercy being given on his becoming evidence against an accomplice in the same crime, is likewise a valid plea in bar of a trial. 4th, Valid objections may be made by the prisoner to the jurisdiction of the court, or to its competency to take cognizance of the crime with which he stands charged. For instance, were the prisoner to be accused of murder, in consequence of a blow or wound given to the deceased on *shore*, having died thereof on *board ship*; or if the stroke or wound were given on board, and that the wounded person was afterwards sent on shore, where death ensued. In either case a court martial could not take cognizance of the crime*.

* Stat. 2 Geo. II. cap. 21.

The court being duly constituted, and the prisoner having pleaded *not guilty*, all the witnesses then present in court, are ordered to withdraw.

But before we proceed beyond this stage of a trial, it will be necessary to notice a peculiar circumstance which occurred at a naval court martial, assembled at Chatham (September 1752) to try Captain Powlett (afterwards Duke of Bolton), of the *Exeter*, for bad conduct in the East Indies, on charges exhibited against him by vice-admiral Griffin, and at which court martial so assembled, not a single witness appeared for examination to substantiate the prosecutor's charges *.

After the court was sworn, a letter and affidavit from vice-admiral Griffin was read, setting forth his inability to proceed on that day to make good his charge against Capt. Powlett, because his most material witnesses to support it were some of them gone abroad, and others not to be come at. That the absent witnesses were such as were absolutely necessary for

* Vice-Admiral Griffin had been previously tried (December 1750) on charges of misconduct, and neglect of duty, exhibited against him by Captain Powlett, and was suspended from his rank during the king's pleasure. It is remarkable that this was the first trial of any importance under the existing laws established in December 1749, contained in an act then passed for amending, explaining, and reducing into one act of parliament, the laws relating to his majesty's ships, vessels, and forces by sea. See *Chronological List*.

maintaining

maintaining the charge; and that he could not, without the benefit of their testimony (as he was advised and believed) proceed to make good the charge.

The court having cleared, and deliberated on the vice-admiral's letter and affidavit, observed, that he did not mention the name or number of the absent witnesses, with the points which each of them had to prove, in order to enable the court to judge of the absolute necessity of their testimony. That it did not appear, even by his own affidavit, that he had taken the proper measures for preventing these necessary witnesses from going out of the way, and absenting themselves when the trial should be appointed. That he did not mention where the absent witnesses were, nor assign any time whatever, by which they might probably be present. That considering the various incidents that might prevent the collecting the absent witnesses together, it did not seem possible that any such time could be assigned. That, therefore, since the vice-admiral positively swore, they were absolutely necessary to maintain the charge, and that he could not, without the benefit of their testimony, proceed to make it good; there did not seem to be any probable appearance that he could thereafter be more able, than at that time, to proceed to make good his charge. And, upon the whole, the court were unanimously of opinion, that it was not reasonable to put off the trial to a more distant day.

Captain

Captain Powlett and all parties being admitted into court, the foregoing observations and opinions were read. Inquiry was made if any witnesses were in the way to support the charge; but none appeared. The court then pronounced sentence of acquittal*.

This judgment is consonant to the principles of law adhered to in our civil and criminal courts; and although instances of a similar nature rarely occur at courts martial, we deem it proper, before quitting the subject, to make a few observations relative to the facts necessary by law to be stated in an affidavit to put off a trial, either on the part of a prosecutor or prisoner.

The postponing a trial (says Judge Foster) is not a matter of right, either when the application is made on the part of the prisoner, or on the part of the crown: for, in either case, the court in its discretion, even though an affidavit be made, may refuse to grant the motion†.

The court in putting off a trial, on an allegation of the absence of witnesses, will take into consideration evidence of the distance from which such witnesses are to be brought. As in the case of the Earls of *Kilmarnock* and *Cromartie*, Lord *Balmerino*

* See the Minutes of Proceedings to try Captain Powlett. App. No. LI.

† Foster 2.

and others, indicted for high treason, by special commission, at St. Margaret's-hill in the Borough of Southwark, June 1745.

The several prisoners produced an affidavit to which they were sworn in court, setting forth that a material witness or witnesses, naming the witnesses, and the places of their abode, would be wanted for their defence; and their counsel, who had been before assigned them, moved that their trials might be put off for a reasonable time, for bringing up their witnesses.

The judges, on consultation, agreed that the cases of these prisoners differs greatly from the common cases of trials on the circuits, where affidavits of this kind ought to be very *sparingly admitted*. For in circuit trials the prisoners, from the time of their commitment, may, and ought to be preparing for their defence. The place where they are to be tried, is, in most cases, well known, and they have likewise a reasonable certainty of the time, long before the circuits begin.

But in the present case, the prisoners are to be tried at a great distance from the places where the treasons were committed; and neither time nor place for their trials can be said to have been certainly fixed until bills of indictment were found against them, and copies delivered to them, from which time it was incumbent on them to be preparing

paring for their defence, and getting their witnesses to town.

And in regard that the affidavits mentioned the witnesses to reside at different distances from town, some in England and others in Scotland ; it was thought reasonable, in fixing the times of trial, regard should be had to the several distances.

The court will not put off a trial on the mere evidence of a formal affidavit, unless there be circumstances to shew that the party applying cannot have substantial justice, without the delay he applies for.

In the case of the *Chevalier D'Eon*, on an information by the attorney general, for a libel on *Count de Guerchy*. Trinity, 4 Geo. III. B. R.

The Chevalier D'Eon, by counsel, moved to put off the trial, on account of the absence of several material witnesses whom he specified in his affidavit. The court, after a full hearing, were unanimous, that there appeared no sufficient reason for putting off the trial. They granted that in all cases, whether criminal or civil, and whether the nature of the proceedings be instantaneous or otherwise, a trial shall not be hurried on so as to do injustice to the defendant ; an affidavit in common form may be sufficient, where no cause of suspicion appears ; but men take such latitude to swear in common form,

form, that, where a suspicion arises from the nature of the question, or from contrary affidavits, the court will examine into the ground upon which the delay is asked, and have in *criminal*, as well as in *civil* cases, refused to put off a trial, notwithstanding an affidavit in common form.

It is necessary, therefore, in such cases as this, *first*, to satisfy the court that the persons are *material* witnesses; *secondly*, to shew that the party applying has been guilty of no *neglect* in omitting to apply to them, and endeavour to procure their attendance; and, *thirdly*, to satisfy the court, that there is a *reasonable* expectation of his being able to procure their attendance at the future time, to which he prays the trial may be put off.

But, in the present case all these reasons fail. The witnesses are sworn to be material, as the defendant apprehends and believes: but, on the contrary, it appears, negatively, that they cannot be material; for, as they were gone out of England some months before the printing, or publication of the libel in question, they could not be supposed to have a knowledge of the facts of the offence laid in this information.

Upon the whole, the court were clearly of opinion that the putting off the trial could not tend to *advance* justice, but on the contrary to *delay* it; and

therefore discharged the rule for shewing cause why it should not be put off*.

The court will postpone a trial on the affidavit of a medical person, stating that the prisoner is in such a state of health as not to admit his being brought into court. Or, on satisfactory affidavit that a material witness is dangerously ill and unable to attend, the court will put off a trial; but the truth of the allegation in the affidavit is to be judged of by the court.

The court will put off a trial on an affidavit, either on the part of the prosecutor or of the prisoner, stating that printed pamphlets or papers have been published and circulated, without the procurement or knowledge of the party applying, whereby the public mind has been prejudiced.

As in the KING v. the DEAN of ST. ASAPH, spring assizes, Shrewsbury, 1784. The trial was put off by the crown, on account of recent publications, whereby the minds of the jury might be prejudiced †.

So in the KING v. ROBINSON, BROOKS, and others, commission of oyer and terminer, Dublin, July

* 3 Burr. 1515. 1 Black. Rep. 512. S. C.

† Mac Nally's Rules of Evidence, 667.

1792, the prisoners were indicted for the wilful murder of — *Lyneal*. A juror having been seized with a fit which endangered his life, the trial was prevented from proceeding from necessity, and the judge discharged the jury. The next day, the prisoners being put to the bar, their counsel, *Curran* and *Mac Nally*, moved to postpone the trial till the ensuing assizes on this ground, that a partial and imperfect account of the evidence, given in court on the former day, had gone abroad through the medium of a newspaper; and therefore, from the impression probably made thereby on the public mind, that it was to be presumed that the prisoners could not at present have the benefit of such an unbiaſſed jury, as the justice and humanity of the law requires.

The court ordered that an affidavit of the fact should be made, and that one of the newspapers, containing the report of the evidence, should be annexed thereto. An affidavit was accordingly sworn by Robinson, one of the prisoners, in which he denied any knowledge of the publication; and the court was clearly of opinion, that the affidavit contained sufficient grounds to put off the trial *.

After a court martial is duly constituted, and when there is no legal impediment arising from any of the circumstances enumerated, to prevent the proceedings going on, all the witnesses are then ordered to withdraw; except the first that the prose-

* *Mac Nally's Rules of Evidence*, 668.

cutor means to produce in support of the charge, who remains in court, and to whom the judge advocate administers the usual oath. As the oath, administered to the witnesses, is not only that that which he deposes shall be true, but that he shall also depose the *whole* truth; he is not to conceal any part of what he knows, whether interrogated particularly to that point or not.

It is the practice of courts martial, after the witnesses are sworn, for the prosecutor to put all proper questions to them; or the president of the court may, in the first instance, desire them to relate what they know respecting the charge against the prisoner: and afterwards the members, with the approbation of the president, put such interrogatories as they may think proper and necessary, for investigating the truth *.

The oath, usually administered at naval courts martial, is as follows: "The evidence you shall give before the court, respecting the charge against the prisoner, shall be the truth, the *whole* truth, and nothing but the truth; so help you God." And, at military courts martial, the oath usually runs thus: "You shall true and perfect answer make,

* Vide Forms of Minutes of Proceedings at Naval Courts Martial. Appendix, No. XXXIV. sect. 1. and 2. Also Form of Minutes of a General Court Martial on an Appeal, No. LV. and Minutes of General Innes's, of the Royal Marines, trial, No. LXIII.

to all such questions as shall be put to you, touching the matter now before the court, between our sovereign lord the king's majesty, and the prisoner, which shall be the truth, the whole truth, and nothing but the truth; so help you God." But as neither the statute, regulating naval courts martial, nor the mutiny act, prescribe any particular form of an oath to be administered to witnesses, there are occasions when it may be necessary to alter the usual form, and give it more solemnity; particularly among the lower class of seamen, many of whom have an idea of mental reservation, in evading the efficacy of an oath, by kissing their *thumb*, instead of the *Holy Evangelists*, with other absurd and trifling evasions. The following oath, combining the essential forms of the courts of judicature in England, as well as those in Scotland, it is imagined would have the proper solemn effect, and make the desired impression on the minds of seamen or soldiers. The judge advocate to make the witness (with his right hand placed on the Holy Evangelists) repeat after him, audibly and distinctly, the words, "I swear, by God, and as I shall answer to Almighty God, on the great day of judgment, that the evidence I shall give before this court shall be the truth, the whole truth, and nothing but the truth; so help me God." Then follows the corporal part of kissing the book of the Evangelists*.

* In the courts of law in Scotland, a witness, while sworn, holds up his right hand, but neither touches nor kisses the book.

The above form was found expedient to be adopted at a court martial, held in North America on twenty seamen belonging to the *Narcissus*, for *mutiny* and *sedition*, where an accomplice was admitted as *king's evidence*, and where there were suspicions against the other witnesses being concerned in the mutinous assemblies, to the secrecy of which they had been all previously sworn by the ringleader. The witnesses gave their evidence without prevarication or fraud, whereby the charge was clearly proved against six seamen, who were accordingly executed *.

The Athenians and Romans, knowing well the importance of witnesses, in judging with what facility they might be corrupted, first administered an oath in the most solemn manner.

The rules for admitting persons not professing the Christian religion as witnesses, and the forms of administering the oath, will be noticed in a subsequent part of this chapter.

It is now settled by law that Jews, and all other persons professing to believe in a *God*, though neither believing in the Old or New Testament, as Mahometans, Moors, Gentoos, Indians, &c. &c. may be witnesses, if sworn according to the ceremonies of the religion they profess.

* See Sentence. Appendix. No. XXXIV. sect. 3.

Though

Though a witness be sworn to give evidence of the whole truth, yet the law humanely protects him from answering questions, which tend to accuse himself of any crime or punishable offence. A witness, says Hawkins, shall not be asked any question, the answering to which might oblige him to accuse himself of a crime*. Neither can a witness be compelled to answer any question, to shew his own turpitude or infamy†.

A most extraordinary power, contrary to the common established principles of law just noticed, was attempted to be introduced into the bill lately brought into parliament, appointing commissioners for inquiring into the abuses of the navy, &c. and which absolutely passed, rather precipitately, through its several stages in the House of Commons. On its being however read in the House of Lords, his Royal Highness the Duke of CLARENCE strongly opposed the principles of the bill; and the clause, vesting a power in the commissioners to examine persons on oath, so as their answers might tend to criminate themselves, was strongly animadverted upon, and, in consequence of the wise suggestions of the Lord Chancellor (ELDON) and the Lord Chief Justice (ELLENBOROUGH), the bill passed with its several amendments, in a form more constitutional, and more consonant to the established doctrines of the laws of the realm, in all matters of investiga-

* 2 Hawk. P. C. ca. 46.

† 4 Inst. 479.

tion, or of an inquisitorial nature*. From what fountain such an attempt at illegal power flowed, or from what motives it originated, it is not our province to inquire. Suffice it to say that no zeal, or pretext for the public good, will justify any man or set of men, however high in authority, to exercise their power beyond the letter and spirit of the law; and that every violation or encroachment, that may be attempted to be made on the established and fundamental laws of the land, or on the rights and privileges of the subject, granting it were successful, must obviously be subversive of that harmonious system of laws, by which the weak are protected, from the authority and passions of the powerful. Every act of authority (says the great Montesquieu) exercised by one man over another is tyrannic, unless it be absolutely necessary. It is also manifest that, by destroying any link of the great chain of causes and effects which bind men together, the energy of public opinion, the best cement of society, would, in proportion, be impaired; hence, the same power improperly exercised, or not duly checked, might, with equal facility, break link after link of the great chain of law by which we have for ages been protected, until ultimately there would be an inlet to every kind of innovation, and the whole fabric of our glorious constitution would thereby be involved in one common ruin.

* Parl. Debates, Dec. 1802.

Where a witness has been convicted of an *infamous* crime, and has suffered the execution of the judgment, he may be questioned as to that fact. There can be no impropriety in this question, as the answer would not subject him to punishment.

Although a witness is not to be asked whether he ever committed any particular offence, yet he may be asked whether he ever was tried for, or charged with a particular offence; and he is bound to answer the question. An atheist, not being competent to give evidence, may be first questioned whether he believes in *God*, and a future state; and if he ever made any declaration to the contrary. All questions put to a witness ought to lead to the fact indirectly and obliquely, but never directly or immediately. The intent of this injunction is, that the question may not suggest an answer, agreeably to the wish of the party putting it.

In this place, it may not be improper to observe that, though it be a settled rule, at common law, that no counsel shall be allowed to a prisoner upon his trial, upon the general issue, in any capital crime, unless some point of law shall arise proper to be debated *—a rule which (however it may be palliated, under cover of that noble declaration of the law, when rightly understood, that

* 2 Hawk. P. C. 400.

the judge shall be counsel for the prisoner, that is, shall see that the proceedings against him are legal and strictly regular *) seems to be not at all of a piece with the rest of the humane treatment of prisoners, by the English law. For upon what face of reason can that assistance be denied, to save the life of a man, which yet is allowed him in prosecutions for every petty trespass †? And the judges themselves are so sensible of this defect, that they never scruple to allow a prisoner counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact: for, as to matters of law arising on the trial, they are entitled to the assistance of counsel ‡.

It is likewise the practice at courts martial to indulge the prisoner with counsel, or at least *amici curiæ* (or friends of the court), who may sit or stand near him, and instruct him what questions to ask the witnesses, with respect to matters of fact before the court; and they may commit to paper the necessary interrogatories as they arise, which the prisoner may give on separate slips to the judge advocate, who reads them to the court, and, if approved of, *i. e.* proper to be put, he inserts them

* Sir Ed. Coke (3 Inst. 137.) gives another additional reason for this refusal, "because the evidence to convict a prisoner should be so manifest as that it cannot be contradicted."

† Black. Com. vol. iv. p. 355. edit. 1791.

‡ Ibid. p. 356.

literally in the minutes, with the witness's answers thereto.

The Egyptians, sensible of the fallacies of oratory and the evil arts of public speakers, banished them from the tribunal; nor would they ever suffer a man to speak in his own cause; well knowing that the advantage which one person may have over another, by more artful speaking or greater confidence. They contented themselves with a simple and intelligent state of the case in writing, which being readily understood, was as readily decided; by these means every man stood upon a level with his antagonist, and nothing but the merits of the cause had any weight in its determination. The Egyptians punished perjury with death*.

* Univer. Hist. vol. i. p. 216.

CHAP. III.

Rules and Doctrine of Evidence, with a Variety of Cases, illustrative of this important Subject.

THE rules and doctrine of evidence, as admitted by law in all criminal cases, or on pleas of the crown, are adhered to nearly in the same manner, upon trials at naval and military courts martial.

“ Rules of evidence (as justly observed by the late LORD KENYON) are of vast importance to all orders and degrees of men ; our lives, our liberty, and our property are concerned in the support of them.”

Deeming it therefore a most important branch of our subject, that the general doctrine of the law of evidence should be well understood, not only by the members of courts martial, but also by those persons who may be placed in the painful situation of parties in the proceedings ; we shall endeavour, with as much brevity and perspicuity as the matter will admit, to exhibit the general rules of evidence, as laid down by our best lawyers, in our criminal code of jurisprudence, and adopted from long established usage.

Evidence, in the general acceptation, is that which demonstrates, makes clear, and ascertains to
a court

a court or jury the truth of the very fact or point in issue to be tried, either on the one side or on the other : and from this it results, that no evidence ought to be admitted on any point, but that on which the issue is joined ; for *probationes debent esse evidentes et perspicuæ* *.

Evidence is of two kinds : first *parole*, or *viva voce* evidence, that is by word of mouth, delivered by witnesses in open court, when examined on an oath or a solemn obligation by an appeal to *God*, administered to the witness according to the custom and ceremonies of his religion. Second, *written* evidence by records, deeds, or authentic documents †. The rules relative to these two kinds of evidence, we shall hereafter notice more particularly.

Witness (*testis*) is one that gives evidence, before a court or in a cause ; an indifferent person to each party, sworn to speak the truth, the whole truth, and nothing but the truth : and, if he will be a gainer or loser by the suit, he is then incompetent, and cannot be sworn as a witness ; for the term *witness* includes *competence*, though it do not include *credit* ‡.

* Co. Litt. 283. Lill. Abr. 547. Black. Com. v. iii. p. 367. ed. 1791.

† Black. Com. vol. iii. p. 367.

‡ Stat. Abr. v. i. p. 700. Black. Com. v. iii. p. 369.— This doctrine applies chiefly to civil suits.

The

The philosophic Beccaria, in his *Essay on Crimes and Punishments*, has remarked that it is an essential point, in all legislations, to determine exactly the degrees of credibility which ought to be given to witnesses, and the proofs necessary to confirm a crime.

The credibility of a witness diminishes in proportion to his hate or friendship for the accused, and his relations with him. When it happens that a conversation, deemed a crime, is to be proved, the evidence becomes of little weight; indeed the tone of voice, the gestures, and all that precedes, accompanies, or follows the different ideas which men attach to the same words, may so alter and modify the conversation of a man, that it is impossible to repeat them, exactly in the manner in which they were spoken. Besides, violent and extraordinary actions, such as real crimes excite, leave a strong impression on the mind, from the multitude of circumstances that accompany or result from them; but words remain only in the memory of the hearers, who are commonly negligent or prejudiced. It is therefore infinitely easier to found an accusation on the words than on the actions of a man; for in the latter the number of circumstances, urged against the accused, afford him a variety of means of justification*.

* Beccaria, c. 13.

In our criminal courts, it is now considered a rule of law * (and the same considerations should hold at courts martial) that, if a jury entertain a reasonable *doubt* upon the truth of the testimony of witnesses, given upon the issue which they are sworn well and truly to try, they are bound in conscience to deliver the prisoner from the charge found against him in the indictment, by giving a verdict of *not guilty*.

Sir Edward Coke, *in favorem vitæ*, exhorts juries not to give their verdict against a prisoner, without plain, direct, and manifest proof of his guilt; which implies that, where there is *doubt*, the consequence should be the acquittal of the party on trial. This reasonable doubt may result from various causes, extrinsic of the evidence given upon oath; for a witness may be perfectly competent, and swear positively to a charge, material to the issue trying, and yet not deserve credit from the court or jury.

The infamy of his character, drawn from himself upon a cross examination, or given in evidence against him by other witnesses; his interest in the event of the trial or prosecution; an apparent influence on his mind; and various other cir-

* Mac Nally's Rules of Evidence on Pleas of the Crown, book 1. c. 1.

cumstances may render him unworthy of credit, even on his oath.

So, the credit of a witness may be materially affected, or totally destroyed by his manner of giving evidence. Resentment or partiality, when prevalent, are apt to shew themselves in the voice and countenance of a witness; and, when they do, they are circumstances which must impress suspicion upon the mind of a jury. So, it often happens that a witness destroys the credit of his testimony by inconsistency, by prevarication, by the manner of his representing facts, and often by intruding his own sentiments and opinions; sometimes by an excess of warmth, sometimes by a solicitous reserve, and often by an affectation of candor. In all these and similar cases, his credibility is, at least, questionable; and, unless his testimony be supported, by clear and unsuspicious collateral proof of the facts charged on the prisoner, *doubt* must arise in the minds of the jurors, and, by the humanity of the law, where doubt is created, an acquittal ought to be the consequence.

Therefore, wherever the evidence warrants the observation, the judges consider it an indispensable duty, in charging the jury, to remind them that, as they are intrusted with the administration of public justice on the one hand, and with the life, the honour, and the property of the prisoner on the other,

other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alleged against him in the indictment.

And this shews that evidence does not consist in merely the swearing to facts; but in the proof of facts, by witnesses of undoubted credit*.

In the trials for high treason, which took place in London in the year 1794, and those for the same offence in Dublin, in consequence of the rebellion of 1798, we find the rule above stated was fully adopted, not only by the court, but even by the counsel for the prosecution; and in the trial of Patrick Finny, January 1798, was fully illustrated on principles of law and humanity. The Judge, *Chamberlain*, in his charge to the jury, animadverted strongly on the testimony of *James O'Brien*, and said, "If you should be of opinion that he has perjured himself, even to a collateral fact, upon this trial, you are to reject his testimony; unless you find that it has been so corroborated by circumstances, or other unimpeachable evidence, as to be irresistible.

"You are to ask this question of yourselves, whether, if he were indicted before you for wilful and

* Mac Nally's Rules of Evidence, b. 1. c. 1.

corrupt perjury, in answer to any questions asked him this day, you would convict him? And, if you are of opinion that you would convict *him*, you ought not, in my opinion, to convict the prisoner upon his unsupported testimony. And, however strongly you may suspect the prisoner, yet it were better that one hundred guilty persons should escape, than make a precedent by which one innocent man might be found guilty upon such testimony *.”

In cases of *felony*, a single *credible* witness has always been considered sufficient to convict a prisoner. The epithet *credible*, when applied to a witness, has a distinct meaning from *competence*: for a witness may be competent to give his testimony, but his *credibility* may be afterwards weighed and considered. It is a settled rule of law, that the question of *competence* is to be determined by the court; the question of *credibility* by the jury. Hence, on the principles above stated, the members of courts martial, who are both judges and jurors, should they think the evidence not credible, ought not to convict a prisoner.

Of all proofs there are none more equitable than the positive affirmation of witnesses. This was what was constantly received and followed by the antient Jews in their judgments, according to God's express

* Ridgeway's Rep. of Finny's Trial, 147.

injunction.

injunctions. “*They are to put to death, upon the testimony of two or three witnesses, the person who merits death.*” This, however, is not free of incertitude and error, and renders it necessary to fix upon principles to get at the truth, by the most minute attention to the dignity, character, and manners of the witnesses; and although, as *Puffendorf* expresses himself, that the religion of an oath obliges in general witnesses to tell the truth, the surest way is not to admit those who may be disposed to the one or the other party, so as affection, hatred, vengeance, or any other passion of the soul might be found combined with the witness’s conscience, all men not having enough of firmness to resist their passions. It was upon similar principles that the antient English legislators, considering the implacable hatred, which prevailed in former times between the English and Scottish nations, very wisely forbid the receiving the testimony of an Englishman against a Scotsman, or of a Scot against an Englishman; presuming that the veracity of witnesses could be changed, by the animosity of the parties *.

That two witnesses were required at common law in cases of treason, was the opinion of Sir Edward Coke; and the common law herein is grounded upon the law of God, expressed in the Old and New Testament. *In ore duorum aut trium testium*

* Puff. Law of N. lib. 5. c. xiii. f. 8. Cambden, an. 1585.

qui interficietur; Nemo occidatur uno contra se dicente testimonium *.

The divine laws do not permit any person to be condemned upon the testimony of a single witness. *First.* At the mouth of two witnesses, says the divine law, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death †. *Second.* One witness shall not rise up against a man for any iniquity or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses shall the matter be established ‡. *Third.* But if he will not hear thee, then take with thee one or two more; that, in the mouth of two or three witnesses, every word may be established §. *Fourth.* He that despiseth Moses's law died without mercy, under two or three witnesses ||.

Hawkins, commenting on the opinion of Sir Ed. Coke, and the passages of scripture above recited, observes, that those in the Old Testament concern only the judicial part of the Jewish law; which, being formed for the particular government of the Jewish nation, doth not bind us any more than the ceremo-

* 3 Inst. 26.

† Deut. c. xvii. v. 6.

‡ Deut. c. xix. v. 15.

§ Matthew, c. xviii. v. 16.

|| 2 Corinth. c. xiii. v. 1.

nial;

nial ; and that those in the New Testament contain only prudential rules, for the government of the church in matters introduced by the gospel, and no way controul the civil constitution of countries *. To which may be added, that whatever may be said, either from reason or from scripture, for the necessity of two witnesses in treason, holds as strongly in other capital cases; and yet it is not pretended that there is, or ever was, any such necessity in the case of any other crime but treason †.

Two lawful witnesses are required to convict a prisoner in all cases of high treason, petit treason, and misprision of treason, unless he shall willingly, and without violence confess the same ‡. And by a subsequent statute it is enforced with this addition, that the *confession* of the prisoner, which, shall countervail the necessity of such proof, must be in *open court* §; but in almost every other accusation, in a court of law, one *positive* witness is sufficient ||.

Baron Montesquieu lays it down for a rule that those laws, which condemn a man to death, in any case on the deposition of a single witness, are fatal to liberty **. And he adds this reason, that the witnesses

* 2 Hawk. P. C. c. xxv. sect. 129.

† 2 Hawk. P. C. c. xlv. 1 Hale's P. C. 299.

‡ Stat. 1 Edw. VI. cap. 12. and 5 and 6 Edw. VI. cap. 11.

§ Stat. 7 Will. III. cap. 3.

|| Black. Com. vol. iv. p. 357.

** " Les loix qui font perir un homme sur la déposition
E 3 d'un

ness who affirms, and the accused who denies, make an equal balance ; it is therefore necessary to call in a third person to incline the scale. *Beccaria*, with his usual humanity, delivers a similar opinion. In his judgment one witness is not sufficient ; for, whilst the accused denies what the other affirms, truth remains suspended ; and the right that every one has to be believed innocent, turns the balance in his favour *. But Sir William Blackstone observes †, “ this seems to be carrying matters too far : for there are some crimes, in which the very privacy of their nature excludes the possibility of having more than one witness ; must these therefore escape unpunished ? ”

Neither indeed is the bare denial of the person accused equivalent to the positive oath of a disinterested witness. In cases of indictments for perjury, this doctrine is better founded, and there our law adopts it : for one witness is not allowed to convict a man for perjury ; because then there is only one oath against another ‡. In cases of treason also, there is the oath of allegiance of the accused, to

d'un seul témoin, sont fatales à la liberté. La raison en exige deux, parce qu'un témoin qui affirme, & un accusé qui nie, sont un partage ; et il faut un tiers pour le vider.

“ Les Grecs & les Romains exigeoient une voix de plus pour condamner. Nos loix Françaises en demandent deux. ” — *Montesq. De l'Esprit des Loix*, liv. xii. c. 3.

* *Beccaria's Essay on Crimes and Punishments*, cap. xxxv.

† *Black. Com.* vol. iv. p. 358.

‡ 10 Mod. 194.

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counterpoise the information of a single witness; and that, perhaps, may be one reason why the law requires a double testimony to convict him: though the principal reason undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages. Another reason may be added, that, in proportion to the atrocity of the offence, the evidence against the prisoner should be credible, strong, and conclusive.

It seems, however, to be the practice at courts martial, as well in the navy as army, to produce two or more witnesses, when they can be procured; but, when two or more cannot be had, one positive and credible evidence to facts is often deemed competent to convict the party accused. But, as Lord Chief Justice Hale observes, this must be very warily admitted *, and the objections that may arise to the credit of a single evidence, under the circumstances of the case before a court, ought to be duly considered; for the benignity of the law is such, that it is held better that ten guilty persons should escape unpunished, than that one innocent person should suffer.

But, when the privacy of the offence is of such a nature, as to exclude the possibility of having more than one evidence, it is the practice at courts mar-

* Hale's Pleas of the Crown, p. 290.

tial to admit it, as being competent in law to convict the party accused. Moreover, we have a recent instance (where no other witnesses could be found) of admitting the evidence of a prosecutor: for the distinction between the objection of the *competency*, and the objections to the *credibility* of a witness, has been long established; and, in criminal prosecutions, it is not a legal objection to the competency of a witness, or the admissibility of his evidence, that he is the *prosecutor*, whatever objections to his credit may arise under the circumstances of the case. The instance alluded to happened at the court martial (January 1789) for trying Lieut. Thackary, of his majesty's sloop Thorn, on several charges exhibited against him by Captain William Taylor: and amongst others, for going into the captain's cabin, when *alone* at tea, and calling him *scoundrel* and *liar*. The privacy of this offence excluded all other positive evidence but that of the prosecutor; and, when the court assembled, Capt. Thompson, the president, had his doubts of the propriety of the court's admitting Captain Taylor to give his evidence; the court was therefore adjourned, until they had the opinion of counsel, on the following question: "Whether Captain Taylor's evidence, under the above circumstances, ought to be admitted or not; and, if it ought to be admitted, whether, after he has been examined, as is the custom of courts martial, to examine the witnesses separately and apart from each other, he can be permitted to remain in the court to conduct the prosecution?" The
opinion

opinion of counsel on this question was, in substance, that in criminal prosecutions it is not a legal objection to the competency of a witness, or to the admissibility of his evidence, that he is the prosecutor; whatever objections to his credit may arise, under the circumstances of the case. The rule, which is universal in civil actions, that a plaintiff cannot be admitted as a witness in his own cause, does not apply to criminal prosecutions, which are always supposed to be at the suit of the crown, and on behalf of the public *.

The court afterwards re-assembled, the prosecutor's evidence was admitted, and Lieutenant Thackary was dismissed from his majesty's service.

Had the members of this court martial been aware of the variety of precedents there are in the naval service, of prosecutors being admitted to give evidence, and afterwards remaining in court to examine witnesses, they would not have found it necessary to have postponed the trial, for the opinion of counsel on such a case. Without dwelling too long on so obvious a point, let it suffice to mention two instances.

1st. In Jan. 1702, Vice-Admiral Benbow issued a commission for trying several captains under his orders, for cowardice, &c. ; and in court gave his

* Vide Case and Opinion. Appendix, No. XXXII. sect. 1 and 2.

own evidence against them, and in consequence Captains Kirby and Wade were shot *.

2d. On the trial of Lieut. John Taaffe, for charges of mal-practices exhibited against him by Mr. Brown, the master, 23d March, 1757, the court, on a similar question, resolved that Mr. Brown might give evidence, and afterwards remain in court, and examine the other witnesses to be produced in support of the charge. The practice of a prosecutor's being entitled to give evidence, in support of the charges brought against a prisoner, is now perfectly understood, and is extremely common at courts martial in the navy as well as in the army; and is the daily practice in all criminal prosecutions. On similar principles of justice, the person accused may call on the prosecutor to give evidence to facts in exculpation of the charge, as well as to the general conduct and tenor of his character; and the prosecutor may also be called upon to produce records or documents of any kind, which may be deemed necessary for the prisoner's defence †.

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* See particulars in Campbell's Admirals, vol. iii. p. 31.

† We find several cases in point which have occurred at army courts martial. On the trial of the Honourable Lieutenant-General James Murray, Governor of Minorca, the judge advocate general's opinion was, in substance, that the accuser and prosecutor is entitled to give his own evidence in support of any of the charges. And accordingly Sir William Draper, who stood in that character upon the trial, gave evidence upon oath, touching one of the charges which accused General Murray of personal

The one general rule, which runs through all the doctrine of trials, is this that the best evidence, the nature of the case will admit of, shall always be required, if possible to be had; but, if not possible, then that the best evidence that can be had shall be allowed. For, if it be found that there is any better evidence existing than is produced, the very not producing it is a presumption that it would have detected some falsehood, which at present is concealed. Thus, in order to prove letters or writings exhibited at a court martial, nothing shall be admitted but the very letters or writings themselves, if in being; but, if they be positively proved to be burnt or destroyed (not relying on any loose negative, as that they cannot be found), then an attested copy may be produced, or *parole* evidence given of their contents *. No evidence of a discourse with another will be admitted, but the man himself must be produced; and *hearsay* evidence to any particular facts is never received. For, in order to give the full force and weight to the testimony of a witness, he must relate to the court the very fact which was done by the party accused, or the identical words

personal wrong and injustice to him, (Sir William Draper.) So likewise on the trial of the Honourable Major H. F. Stanhope, for the surrender of Tobago; General Fergusson, who was accuser and prosecutor, gave his own evidence at great length in support of the charges; and the practice is extremely common.

* The same doctrine holds at law, with regard to leases for years. Black. Com. vol. iii. p. 368.

that

that were spoken by him, relative to the point at issue.

The first and most signal rule in relation to evidence is this, that a prosecutor must produce the *utmost* evidence, that the nature of the fact is capable of: for the design of the law is to come to legal demonstration in matter of right; and there can be no demonstration of a fact without the best evidence, that the nature of the thing is capable of*.

In a criminal prosecution, though the defendant be possessed of the best evidence the nature of the case admits of, yet he cannot be obliged, or even legally required, to produce it against himself. This is according to the maxim of law, "*that no man is bound to accuse himself.*" But, in civil causes, the court will force parties to produce evidence which may prove against themselves, or leave the refusal to do it, after proper notice, as a strong presumption to the jury†.

Parole testimony may be given of a written instrument, upon an indictment for stealing such instrument, notwithstanding it is proved to be in existence, and out of the actual possession of the defendant; for the possession of the holder is constructively the possession of the defendant.

* Gilb. Evid. by Lofft, 4. 2 Hawk. P. C. cap. xlvii.

† Mac Nally's Rules of Evidence, 346.

In a criminal prosecution, the solicitor for the crown may give notice to the defendant to produce a paper in his possession, and, in case he neglects to produce it, he may give other evidence of its contents ; and copies are admitted, when the originals are in the adversary's hands, for the same reason as when originals are proved to be lost or destroyed. This has been solemnly determined, by several decisions of court *.

The rules of evidence are universally the same in courts of law and courts of equity ; and, therefore, if we apply the principle of the last-mentioned rule to courts martial, a prosecutor can at all times call on a prisoner to produce any particular written order or instructions given him, and his disobedience of which may be the subject at issue of the trial ; and, in case he refuses to produce the original paper, the prosecutor may prove, by parole evidence, its contents, and exhibit copies of such original order.

On similar principles of justice, a prisoner may call on the prosecutor to produce certain orders, letters, records, or papers, that he thinks may tend to his exculpation from the charges brought against him.

A regularly attested copy is evidence in many cases, and may, at all times, be made evidence by the

* 2 Term Reports, 201.

consent of parties. But is a general rule that, whenever an *original* is of a *public nature*, and would, if removed and produced in evidence, be detrimental to the public service, an immediate sworn copy is evidence; unless where particular cause, such as an alteration or erasure in the original, be shewn.

Thus sworn copies of a muster-book, log-book, or journal, delivered into the navy-office, would be admitted as evidence at a court martial. So would the register of baptisms, burials, or authenticated sworn copies be admitted as good evidence. The muster-books at the navy office, with proof of the method therein used, of returning all persons dead with the mark D.D. was even found to be good evidence of a person's death, at a trial on shore *, consequently always admissible at courts martial. The books of public offices, and of public bodies, which of course are not interested in the event of the trial, are admissible evidence. A copy of an account, certificate, or other document has often been objected to (and with great propriety) at courts martial, as not the best legal evidence that could be produced.

In the trial of Major John Gordon, of the late 8th West India Regiment, at a general court martial, held at the Royal Hospital, Chelsea, February 1803, the prosecutor, Colonel Andrew Cochrane

* Bull. N. P. 249.

Johnstone, produced in evidence a compared and certified copy of a certain account current, from the books of Messrs. Addison and Co. auctioneers, of Roseau, in the Island of Dominica; and which the prosecutor deposed was delivered to him by Mr. James, one of the partners of the firm of Addison and Co, and that it was all in the hand-writing of him, the said Mr. James, and was compared before the prosecutor (then Governor of the Island of Dominica) as a true copy from their books; and that he saw the hand-writing of Major Gordon, in the books of the said Messrs. Addison and Co. as having received the balance of 44*l.* 1*s.* 4*d.* in full, on the 24th of April 1802, as stated in the account produced; which books of the said Messrs. Addison and Co. could not be removed from the Island of Dominica, by reason that a colonial tax of two and a half per cent. is collected upon all public sales, and that the books must remain in the island as a check upon the amount of such sales, consequently the witness added, he conceived a compared copy was good evidence.

Major Gordon stated his objections to the admission of this account as follows:—"This is a copy of an account of Lieutenant Mackay only; and, if such an account could by any possibility be received in evidence against Major Gordon, it is quite clear, upon the first principles of evidence, that the original only could be received, because a copy is not
4 the

the best evidence, of the existence of such an account. This is attempted to be taken out of the principle, by proving that the prosecutor inspected it with the original. If this were sufficient, a false copy might be imposed upon the court ; because Major Gordon could have no controul over such inspection."

Colonel Johnstone, in answer to Major Gordon's objections, stated as follows :—"The question here is, whether the copy produced by me is admissible? The objection is, that it is a copy, and that it is not the best evidence that the nature of the case admits, and is proved by the prosecutor. It is clear that a copy is not evidence, where the original can be procured ; but it is equally clear, that a copy, when proved to be compared, is evidence when the original cannot be procured ; for example, the records of many courts are not moveable, in all such cases office copies are evidence. In many cases books cannot be moved, because the general law requires that they should be stationary for the public good. In all those cases compared copies, proved on oath to have been compared, are evidence. The books of auctioneers in Dominica, are in their nature public ; being the only evidence of a two and a half per cent. tax on sales, and must not be moved, otherwise they might be defaced or altered, and the revenue defrauded. This I prove upon my oath to be the case with those books.

“ The objection to my being the person to prove those facts it is unnecessary to argue : the law of this court, and of the land, makes the prosecutor a witness in every case, and I, who compared the copy with the books, and inspected the books for that purpose, swear that this is a true copy ; and that the signature which I read in the book, and which is truly copied, is the hand-writing of the prisoner. And that upon every principle this copy must be admitted, as the best evidence the nature of the thing will admit of ; the books themselves, for the reason already given, being immoveable.”

The court being cleared came to an opinion, that the account now produced should not be received as evidence ; but that Colonel Johnstone should be asked, whether he had any other account which could ascertain the fact he intended to establish ; which opinion being communicated in open court,

Colonel Johnstone answered, that he transmitted a similar account, under the signature of the chief justice of the Island of Dominica, to His Royal Highness the Commander in Chief. On tendering this official document in evidence, the hand-writing of the judge being proved, Major Gordon contended against receiving it, as follows, viz.

“ This book, from which the copy is taken, is no record ; if it was, it may be admitted that the copy of a record may be received in evidence, if it

is properly authenticated, by a proper officer who has the custody of the records. Copies of the proceedings of the courts in the West Indies are admitted ; but it is essential, to the admission of them, that the copies should be under the seal of the island, and there is no instance in which such copies have been received without such authentication. There is no evidence that the book itself cannot be produced."

The court, however, decided that the official copy should be received in evidence.

Colonel Johnstone afterwards produced to the court a certificate signed by John Gordon, assistant commissary, dated Dominica, 18 June, 1802, certifying the delivery of flour and rice : but Major Gordon objected to its being received in evidence, stating the following reasons, viz.

" This certificate purports to be a certificate of the issue of a certain quantity of stores of Quartermaster Mackay. Major Gordon has nothing to do with any such issue, and it cannot be received as evidence against him ; and, if admitted, it would only prove a regular issue to the person authorized by the quarter-master to receive it, and he has no opportunity of cross-examining him."

The court, after consideration, came to an opinion that it should not be received.

Major

Major Gordon, in his defence, thought it proper to state, for the purpose of removing any unfavourable impression, which might arise in the minds of the court, from some legal objections he made to the admissibility of parts of the evidence as above noticed, that these objections were suggested by the gentlemen who had afforded him their legal assistance, and concluded with the following observations on the subject, which appear to be well-founded, on the rules of evidence and the principles of justice :

“ The legal principle, upon which a copy of an account under the hand-writing of the party is not admitted in evidence in the courts of Westminster Hall, is that, if a man is to be charged by his own hand-writing to an account, that hand-writing and the original account must be produced; and the reason it must be produced is, that he may be sure no alteration by erasure or otherwise has been made in it, but that it is the same paper in dates, sums, &c., he signed. If any alteration had been made in the original, by erasure or otherwise, it would appear upon the inspection of it, and he would have the benefit of any observations which might arise from that circumstance. But, if a copy be admitted, it may happen that the original may have been altered in every material circumstance; that most of the sums may be written upon erasures, and if those alterations were made before it was copied, they would not appear, as it only purported to be a true copy at the time it was made. It is therefore that the law requires, in all cases, except in the case of

records that to charge a man, upon any thing under his hand, the original, and the original only, should be evidence. I mention this shortly, to shew the reason which induced me to object to the admission of this copy, when it was offered in evidence. I could not be sure of the extent to which it might go, as it might charge me, for the reason already mentioned, to a much greater extent than I had charged myself by the original. In this case it has been admitted, and I think it right to say, that I have no proper recollection of the account, and never touched the money. And I took the objection to the admission of it that it should appear on the minutes that such evidence was admitted *."

No evidence can be received against a prisoner but in his presence ; and therefore it is agreed that what a stranger has been heard to say is, in strictness, no manner of evidence, either *for* or *against* the prisoner †. The reasons assigned as the grounds of this rule are, because such evidence is not upon *oath* ; and also because the party, who would be affected by such evidence, had no opportunity of cross-examination, and these rules are strongly illustrated in various cases ‡.

* See Proceedings on the General Court Martial, in the trial of Major John Gordon, of the late 8th West India Regiment, February 1803, conducted by counsel on both sides ; for the prosecutor, William Adam and John Morthland, Esqrs. and for Major Gordon, Alexander Pitcairn and David Montague Erskine, Esqrs.

† 2 Hawkins's P. C. cap. xlv.

‡ Mac Nally's Rules of Evidence, 360.

But

But *hearsay* evidence may be made use of, by way of inducement or illustration of what is properly evidence *.

Verbal confessions, and what a prisoner has been heard to *say* at any time in conversation, or by observation relative to the matter in issue, may be given in evidence *against* him. And, therefore, words spoken at any time may be given in evidence to support an overt-act of high treason, though not treason in themselves †.

But though the declarations of a prisoner respecting facts, or which apply to the particular case charged, the *intent* making part of the charge, may be given *against* him, they cannot *for* him. Therefore a witness for this purpose cannot be called in the prisoner's defence; but he may *cross-examine* any of the witnesses on the part of the prosecution, as to any thing they may have heard him say relating to the fact with which he is charged ‡.

A question of this nature was solemnly decided on the trial of *Hardy*, for high treason, in compassing the death of the King; Old Bailey Sessions, 1794.

Mr. Erskine, counsel for the prisoner, put this question to Mr. Daniel Stuart, a witness. “ You

* Bull. N. P. 294.

† 2 Hawk. P. C. cap. xlv. 1 Hale P. C. 116. Foster, 202.

‡ Bull. N. P. 294.

stated in your former examination your personal acquaintance with the prisoner at the bar, and your transactions with him before. Did you ever hear him state what his plan of reform was? The witnesses answered, he always stated it to be the Duke of Richmond's plan, universal suffrage and annual parliaments. Q. Was that said to you publicly, or in private confidence? A. It was said publicly, and he sold me some copies of the Duke of Richmond's Letter."

The counsel for the crown objected to the evidence. Mr. Erskine made an able reply, and cited a variety of cases. The judge rejected the questions and answers given in evidence, and, in summing up the arguments on both sides, observed, "that nothing is so clear as that all *declarations* which apply to *facts*, and even apply to the particular case that is charged, though the *intent* should make a part of that charge, are evidence *against* a prisoner, and are not evidence *for* him; because the presumption, upon which *declarations* are evidence, is that no man would declare any thing *against* himself, unless it were true; but that every man, if he was in difficulty, would make declarations for himself. Those declarations, if offered as evidence, would be offered therefore upon no ground which entitled them to credit *."

* Hardy's Trial, 4 vol. by Gurny, from 27 to 66. Mac Nally's Rules of Evidence, from 362 to 378.

What a witness hath been heard to say at another time may be given in evidence, in order either to invalidate or confirm the testimony which he gives in court *.

It is a settled rule of law that no evidence is to be given against a prisoner, but in his presence †.

The depositions of a witness taken *ex parte* before a magistrate, on an examination concerning a *mis-demeanor*, cannot be read in evidence on the trial of the party, after the death of the deponent ‡.

The statute of 2 and 3 Philip and Mary, cap. 10. which permits informations of persons deceased taken judicially, that is in the presence of the party charged, to be read in evidence after the death of the party swearing, is confined to felonies §.

In exception to the general rule, "that no evidence can be received against a prisoner but in his presence;" it has been repeatedly determined, and is unquestionable law, that, on a trial for murder, the declaration of the deceased, after the mortal wound is given, conscious of approaching death, may be

* 2 Hawk. P. C. cap. xlvi.

† Ibid.

‡ 1 Salk. 281. Holt. 294. Comb. 358, S. C.

§ 2 Hawk. P. C. cap. xlvi.

received in evidence against the prisoner, although such declaration was not made in his presence *.

On the trial of *Reason* and *Tranter*, Hilary, 8 Geo. I. the prisoners, who were sheriff's officers, stood charged by indictment for the murder of Edward Lutterel, Esq. The counsel for the crown offered in evidence several declarations of the deceased when on his death bed, whereby he charged the prisoners with having murdered him, and the court admitted the evidence †.

So also, in the case of Major *Oneby*, convicted for the murder of *William Gower*, Esq. Old Bailey Sessions, March 1725, Mr. *Gower*'s dying declaration was received in evidence ‡.

Every witness, whether on his examination in chief, or on the cross-examination, has a natural right to explain and make clear the evidence he has given; and, if any *doubt* arises after his examination has closed, the court will call upon him for such explanation.

Such explanation is, in many instances, allowed in written evidence, and it is much more reasonable that it should be admitted on examinations.

* Mac Nally's Rules of Evidence, 381.

† Ibid. 1 Strange, 499. 6 State Trials, 195. 201.

‡ 9 State Trials, 14, 15.

Viva voce, or parole evidence. Counsel are apt, in cross examining a witness, to impeach his credit on apparent contradictory matter; and Lord MANSFIELD has often said on such occasions, "Would you have the witness perjured, because he will not be perjured, but corrects himself like an honest man?"

The good sense of this rule has been illustrated, in several cases determined in the courts of law *.

What has been sworn against a prisoner, on the trial of another person, ought not to be given in evidence against him on his own trial †.

Where the memory of a witness fails him with respect to time, or particular dates, he may be allowed to recur to notes, or he may be set right by the court; but he is not to be allowed to read any papers of evidence previously prepared.

The mere similitude of hand-writing, in two papers shewn to a jury, without other concurrent testimony, is no evidence that both were written by the same person ‡; yet, undoubtedly, the testimony of witnesses, well acquainted with the party's hand, that they believe the paper in question to have been written by him, is evidence to be left to a jury §.

* Mac Nally's Rules of Evidence, 388. 390.

† 2 State Trials, 863.

‡ Ibid. vol. viii. p. 472. 2 Hawk. P. C. 431.

§ State Trials, vol. iv. p. 453. Ibid. vol. vi. p. 69.

Papers found in the custody of the prisoner, and the writing thereof being proved to be in his hand, by persons who have seen him write, is sufficient preliminary evidence for their being admitted to be read in court.

The comparison of hands is no more than a presumption founded on the likeness, which may easily fail; because they are very subject to be counterfeited. Therefore, when the comparison of the hands is the *only* evidence in a criminal prosecution, there is no more than one presumption against another*. The proof ought to be stronger and more certain in criminal matters than in civil.

Algernon Sidney, in the reign of Charles the second, was unjustly convicted and attainted of treason on the production of a paper found in his closet, supposed to be his hand-writing, which was not proved, by the testimony of any one witness, to be written by him; but the jury was directed to believe it, by comparing it with other writings of the said *Algernon*: and, besides that paper so produced, there was but one witness to prove any matter against him. Immediately after the revolution, the attainder of *Algernon Sidney* was reversed by parliament; the act declaring, that “by a partial and unjust construction of the statute, declaring what was his treason, he was unjustly and

* *Gilb. Evid. by Lofft, 54.*

wrongfully

wrongfully convicted and attainted, and afterwards executed for high treason.”

Therefore in a variety of trials for treason, &c. where the king's counsel have endeavoured to prove by comparifon of hands, having no other evidence, it has been declared by the court, on production by the prifoners, of a copy of the act of parliament for the reverfal of the attainder of *Algernon Sidney*, that the comparifon of hands is not legal evidence, and the juries have acquitted them accordingly *.

In the naval and military fervices, we find frequent instances of trials of officers and men for writing to their fuperior officers unbecoming letters, containing indecent and violent expreffions. In the Chronological Lift of Trials at Naval Courts Martial, feveral offences of this nature will be found. John Shaw, pilot, on board the *Love*, was tried, 22d October, 1761, for having written a letter to Lieut. *Marbeux*, containing unbecoming and infolent expreffions, and was fentenced to ask his pardon, and to fuffer fix months confinement.

On the the 18th November, 1761, the faid Lieut. *Marbeux* was alfo tried for having written a letter containing infolent and infamous expreffions, re-

* KING v. *Crosby* alias *Philips*, B. R. 7 Wil. III. *Hensley's* Cafe, State Trials, cap. 42. Alfo Sir *Jahn Fenwick's* Cafe, 3 Wil. III. 6 State Trials, 79, 80.

specting Captain Penny, his commander, and was, for the offence, dismissed his majesty's service.

In the latter end of 1784, Colonel Hugh Debbiege was tried at a general court martial, for writing several disrespectful and injurious letters to the Duke of Richmond, as master general of the ordnance, and found guilty. But, in consideration of the high character of the said Colonel Debbiege as an officer, and his meritorious services, he was adjudged only to be reprimanded in open court, and to make his submission to the Duke of Richmond in the terms specified in his sentence; which being approved by his majesty, and the sentence of the court having been complied with, the colonel was released from his arrest, and the court dissolved*.

Written or printed papers, found in the possession of the prisoner, may be read against him in evidence, if accompanied with publication; more especially papers relative to any treasonable or mutinous design previously formed being specially laid in the indictment or articles of charge.

Letters written and forwarded on their way, for purpose of a treasonable correspondence, whether found in the possession of the prisoner, or intercepted or stopped in the post-office, may be read in evi-

* See particulars of this case and sentence, Appendix, No. LXIV.

dence against him, on a charge of levying war, adhering to the king's enemy, or compassing the king's death, to prove the treason *.

The confession of a prisoner, taken on examinations by a magistrate on an information, and reduced into writing, cannot be given in evidence until its identity be proved †. But the confession of the prisoner himself, in discourse with private persons or before a magistrate, if not taken in writing, hath always been received as evidence against him ‡. As in *Stone's case*, Trinity, 4 Eliz. the prisoner, who was indicted for murder, was convicted on his own confession to two prisoners confined with him in Newgate §. And in *Hall's case* Lent assizes, Stafford, 1790, it was held, that if a confession be not taken in writing, parole evidence of such confession is legal evidence, and a prisoner may be convicted thereon, although the facts be totally uncorroborated ||.

Confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are or are not entitled to credit ¶.

* Mac Nally's Rules of Evidence, 423.

† 1 Hale's Pleas of the Crown, 284.

‡ 2 Hawk. P. C. cap. xlv.

§ Dyer, 214. cap. 215. Francis' Case, 6 State Trials, 58.

|| Mac Nally's Rules of Evidence, b. i. cap. vi.

¶ Leach. Cr. Cases, 3 Ed. 298.

The confession of a prisoner taken upon *oath* cannot be read in evidence against him ; of course no prisoner before a magistrate ought to be sworn. The reasons of this restriction result from the most obvious principles of justice, policy and humanity.

Though a confession obtained under the impression of fear, or hope of pardon, or taken upon the oath of the defendant, cannot be given in evidence, yet, if any facts arise in consequence of such a confession, they may be given in evidence ; and it can never go to the rejection of evidence by witnesses discovered in consequence of the confession*.

This rule was solemnly laid down as law in the trial, the *King v. Warrickshall*, Eyre, C. B. stating, as undoubted law, that any facts, which may arise in consequence of even such confessions, may be given in evidence ; because FACTS must be ever immutable—the same whether the confession which discloses them be true or false, and justice cannot suffer by their admission†.

It is now a settled rule of common law that, in cases of felonies and misdemeanors, if the confession of a prisoner be voluntarily made, and regularly proved at the trial, it is sufficient, if the jury believe

* Mac Nally's Rules of Evidence, b. i. c. vi.

† Leach's Cr. Cases, 3 Ed. 298.

it to be true, to convict the prisoner, without any corroborating evidence to support it *. But the “only kind of confession that could go to a jury, (as observed by a learned judge) ought to be uninfluenced by fear, and unseduced by hope.”

Wherever a prisoner's confession is made use of against him as evidence, it is but justice and reason that his whole confession shall be taken together, and not by parcels, so as to be evidence as well for as against him †.

POSITIVE proof is always required, where, from the nature of the case it appears it might possibly be had ‡. But next to *positive* proof, *circumstantial* evidence, or the doctrine of *presumptions* may take place; for when the fact itself cannot be demonstratively evinced, that which comes nearest to the proof of the fact is the proof of such circumstances, which either *necessarily* or *usually* attend such facts; and these are called presumptions, which are only to be relied upon till the contrary be actually proved. *Stabitur præsumptioni donec probetur in contrarium* §. *Violent* presumption is often equal to full proof ||, where those circumstances

* Leach's Cr. Cases, 3 Ed. 349.

† 5 Mod. Rep. 165.

‡ Black. Comm vol. 3. p. 371.

§ Coke upon Litt. p. 373.

|| Ibid. p. 6.

appear which necessarily attend, and are incident to the fact.

If a man be found suddenly dead in a room, from a wound by a sharp instrument, and another be found running out in haste with a bloody sword, this is a violent presumption that he is the murderer: for the blood, the weapon, and the hasty flight, are all necessary concomitants to such a horrid act; and the next proof to the sight of the fact itself, is the proof of those circumstances that do thus indicate the fact*.

In cases of circumstantial or presumptive evidence, it is necessary that all witnesses be persons of unimpeachable veracity; as it is possible the prisoner may be innocent of the crime. In evidence of this kind there is great room for doubt, as to the guilt of the prisoner; and it is a principle in law, that, in every case of doubt, a court should lean to the merciful side, and acquit.

The character of the prisoner is of great weight in all cases, where presumptive evidence appears against him; and creates a greater degree of doubt, than where the prosecution is supported by direct evidence.

* Coke upon Litt. 6. 2 Hawk. P. C. cap. xii. sec. 12. cap. xlv. sec. 7. cap. xlvi. sec. 2. 3 St. Trials, 930.

The introduction of a falsehood into the defence is a *presumption* against the prisoner. This presumption is heightened, if the falsehood is to be supported, as it almost necessarily must, by a witness conscious of it *.

A recent moral writer†, with just reason, (though not in strict conformity to law,) observes on this subject, “ that a concurrence of well authenticated circumstances composes a stronger ground of assurance than *positive testimony*, unconfirmed by circumstances, usually affords. Circumstances cannot lie. The conclusion, also, which results from them, though deduced by only probable inference, is commonly more to be relied upon, than the veracity of an unsupported solitary witness. The danger of being deceived is less, the actual instances of deception are fewer in the one case than in the other. *Positive* proof, in criminal matters, may be founded in the mistake or perjury of a single witness. Such mistakes, and such perjuries, are not without many examples. Whereas, to impose upon a court of justice, a chain of *circumstantial* evidence, in support of a fabricated accusation, requires such a number of false witnesses as seldom meet together; an union also of skill and wickedness, which is still more rare; and, af-

* Mac Nally's Rules of Evidence, 580. Gilb. Evid. by Lofft, 898.

† Paley's Moral and Political Philosophy, b. vi. c. ix.

ter all, this species of proof lies much more open to discussion, and is more likely, if false, to be contradicted, or to betray itself by some unforeseen inconsistency, than that direct proof, which, being confined within the knowledge of a single person, which appealing to or standing connected with no external or collateral circumstances, is incapable, by its very simplicity, of being confronted with opposite probabilities."

Probable presumption, arising from such circumstances as *usually* attend the fact, hath also its due weight. *Light* or rash presumptions have no weight or validity at all.

All *presumptive* evidence, in criminal matters, should be admitted cautiously *. And Sir Mathew Hale, in particular †, lays down two rules most prudent and necessary to be observed. 1. Never to convict a man for stealing the goods of a person unknown, merely because he will give no account how he came by them; unless an actual felony be proved of such goods. And, 2. Never to convict any person of murder or manslaughter, till at least the body be found dead; on account of two instances he mentions, where persons were executed for the murder of others, who were then alive, but missing.

* Black. Com. vol. iv. p. 358.

† 2 Hale, P. C. 200.

In criminal cases, the open examination of witnesses *viva voce*, in the presence of all mankind, is much more conducive to the clearing up of truth *, than the private and secret examination taken down in writing, in all courts that have borrowed their practice from the civil law ; for a witness may frequently depose that in private, which he will be ashamed to testify in a public and solemn tribunal. The court will be able to keep the witness from wandering from the point in issue, and will have an opportunity of observing his quality, age, education, understanding, behaviour and inclination ; all which necessary leading features cannot be collected from the depositions of witnesses when brought forward in writing, and read to the court in the absence of those who made them : and, further, as much may be frequently collected from the manner in which the evidence is delivered, as from the matter of it. These are a few of the advantages attending this the English method of giving testimony, *ore tenus* † : which was also indeed familiar among the ancient Romans, as may be collected from Quintilian ; who lays down very good instructions for examining and cross-examining witnesses, *viva voce* ‡.

A witness, when under examination in chief, must not depose as he *thinks* or *persuades* himself

* Hale's Hist. of Common Law, 254, 5, 6.

† Black. Com. vol. iii. p. 374.

‡ Institut. Orat. lib. v. c. vii.

to *believe* : he must swear from his knowledge of the fact. But his *belief* is evidence on the cross examination ; whether examined on the part of the crown or of the prisoner. There is an exception to this rule, in the case of professional men giving evidence ; they are always examined to the best of their skill and knowledge *.

It has frequently occurred, at courts martial in the army and navy, that a witness has been desired, under particular circumstances, to give his opinion to the court ; and this, on many occasions, may be strictly proper, and necessary for a witness to do when called upon : particularly, in such cases as relate to the operations or evolutions of an army or fleet ; and whether, in the opinion of a witness, they were carried into complete or imperfect execution by the person tried for disobedience of orders in battle, or for not having done his utmost, &c. Questions of opinion were put to some of the witnesses, on the trial of Admiral Keppel and Vice-Admiral Sir Hugh Palliser, and the answers admitted in the body of evidence †.

A practice now universally prevails, in courts of law, that if a juror knows any thing of the matter in issue, he may be sworn as a witness, and give his evidence publicly in court ‡, but not in

* Mac Nally's Rules of Evidence, 262.

† See Trials of Admiral Keppel and Sir Hugh Palliser.

‡ Black. Com. vol. iii. p. 375.

private before his brother jurors ; and it has been admitted, that it is no exception, even against a person's giving evidence for or against the prisoner, that he is one of the judges on his trial ; but in such case it is not usual for the judge, having given evidence, to resume his seat on that trial*, though we do not know any law to the contrary.

On the trial of the REGICIDES, Old Bailey, December 1660, Secretary Morris and Mr. Annelly, president of the council, were both in commission for the trial of the prisoners, and sat upon the bench ; but there being occasion to make use of their testimony against *Hacker*, one of the prisoners, they both came off from the bench, and were sworn, and gave evidence, but did not go up to the bench again during the man's trial. And it was agreed by the court they were good witnesses, though in commission as judges, and might be made use of†.

Jurors may be examined not only as to the character of prisoners, but to facts in the cause ; but they must be sworn as other witnesses are, and they must give their evidence in open court in the usual way ‡.

* Kelyng's Reports, p. 12. 2 Hawkins, P. C. cap. xlvi.
7 Edit. p. 608.

† 2 State Trials, 384.

‡ Mac Nally's Rules of Evidence, 238.

On the trial of Admiral Keppel, (January 1779.) when the court assembled on board the *Britannia* in Portsmouth harbour, the names of the admirals and captains on board, according to their rank and seniority, were called over by George Jackson, Esq. the judge advocate, till a sufficient number answered to their names to compose the court; those being passed over, who had been summoned to give evidence on the trial. This being objected to by the Hon. Captain Walsingham, the judge advocate read the following case, and the opinion of his majesty's attorney and solicitor general, and of Mr. Cust, thereon, to the court; whereby it appears that if any officer, entitled by his rank to sit at a court martial, is either prosecutor, party or witness, the person next in seniority must supply his place, and the court so composed will be legally held, according to the intent of the act.

Case submitted for the opinion of Counsel.

The 22d of Geo. II. chap. 33. sect. 11. enacts,
 “ That from and after the 25th day of December 1749, it shall be lawful for the said lord high admiral of Great Britain, or the commissioners for executing the office of lord high admiral of Great Britain, or the commissioners for executing the office of lord high admiral for the time being, and they are hereby respectively authorised, from time to time, as there shall be occasion, to direct any
 flag

flag officer or captain of any of his majesty's ships of war, who shall be in any port of Great Britain or Ireland, to hold courts martial in any such port, provided such flag officer or captain be the first, second, or third in command, in such port as shall be found most expedient, and for the good of his majesty's service; and such flag officer or captain, so directed to hold courts martial, shall preside at such court martial, any thing herein contained to the contrary notwithstanding."

Sec. 12. "That, from and after the 25th of December 1749, no court martial, to be held or appointed by virtue of this present act, shall consist of more than thirteen, or of less than five persons; *to be composed of such flag officers, captains, or commanders then and there present, as are next in seniority to the officer who presides at the court martial.*" Notwithstanding the words in Italic in the 12th section, the usage at courts martial has been, for officers who have given evidence at the trials, not to sit as members of the courts, although they were senior to others who sat, and consequently would have sat as members, if they had not been examined as witnesses.

The lords commissioners of the admiralty having lately received a complaint in writing, charging an officer of rank in the royal navy, with one of the offences specified in the articles of war, which are created and set forth by the above-mentioned act of

parliament, their lordships have therefore thought fit to issue their order, or warrant in writing, to Admiral Sir Thomas Pye, at Portsmouth, requiring him forthwith to assemble a court martial, for the trial of the said officer. And it having been suggested to their lordships, that several officers and commanders of the king's ships, at Portsmouth (who, on account of their seniority, must sit as members of the said court martial, if the letter of the 12th section, in the said act, is conformed to), will be summoned as witnesses, either in support of the charge, or in behalf of the accused. You are therefore requested to advise their lordships, whether, in case such senior officers should be called upon to give evidence at the trial, they may likewise sit as members of the court martial? And also, whether the court can be legally held, without the senior officers (who shall happen to be called upon to give evidence), in case it is necessary for their juniors to sit as members, in order to make up the number required by the statute to constitute a court.

The following opinion was given on the above case: "The usage of the service is very material upon this case, for naval courts martial are evidently considered, in the statutes concerning them, as known and established courts, consequently, in matters not especially provided for, the settled course of proceedings must have great weight. That the characters of witness and judge are not consistent, is very obvious; and though, in the common law
of

of England, there is no challenge to a judge, yet, in the only instance we know, where judges were called upon to give evidence, in a criminal case, (Kelyng's Rep. 12.) it is observed, that they sat no more during that trial. By a strict and literal construction of the statute of the 22d of Geo. II, chap. 33. sec. 12. neither the prosecutor, nor the prisoner, would cease to be judges. But this construction would be absurd, and the act must, from common sense, admit, as the usage is, that officers, to whom there is a just ground of exception, or who have a just ground of excuse, shall not be included in the number of those of whom the court is to be composed; consequently, if any officer, entitled by his rank to sit, is either prosecutor, party, or witness, the person next in seniority must supply his place, and the court, so composed, will be legally held, according to the intent of the act."

Circumstances may, however, arise, in the course of a trial, to render the testimony of a member of a court martial most essential evidence, for or against a prisoner; and, as the investigation of truth is the principal object in view, it does not seem incompatible, with the principles of law or of equity, that such a member (who sits in the united capacity of judge and juror) be sworn in open court, and, after having given his testimony to the matter of fact at issue, that at courts martial, upon the same principles as a juror, he may resume his seat as a member of the court.

But

But, it may not be improper to observe that a court, in judging of the innocence or guilt of a prisoner, are by no means to be influenced by any report, of any member or other person, not given publicly in evidence; whatever may be the respectability and the certainty of him, from whom the information is received: not merely because it hath not been given upon oath, and the accused hath not had either the privilege of a cross-examination, or an opportunity of rebutting the charge, but for the sake of the members themselves; because information of this kind cannot be made part of the minutes, and the grounds of the sentence may, consequently, upon a revision by his majesty, or by the admiralty, be considered defective.

It has been heretofore held, in criminal courts, that a prisoner cannot examine to character, except *in favorem vitæ*, when charged on a capital indictment; but the rule is now wisely extended to all cases of *misdemeanors*. And this appears to have been the ancient practice. According to the principles of sound sense and right reason, if character be admitted as evidence in a case affecting the life of a man, it ought also to be admissible evidence in a case affecting his freedom, his property, and his reputation. We have therefore a variety of instances, in the practice of our criminal courts, where this rule is strictly and tenaciously adhered to*.

* Mac Nally's Rules of Evidence, 321.

In giving general character in favour of a prisoner on trial, the witness may assign in evidence the *reasons* on which he gives that character.

This hath been ruled in a variety of cases*, and there is a sound and a humane reason for admitting such evidence. The king is sworn at his coronation to administer justice in mercy; and therefore judges, who represent majesty sitting in the judgment seat, are called upon to receive such evidence to ground and support a *recommendation* to royal clemency, in such cases where the evidence warrants it. And, Lord Kenyon's sentiment, though promulged in a capital charge of the first magnitude, may be well applied to all cases, where the *character of the prisoner comes at issue*. His lordship observed, that "an affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner; and when those who give such character in evidence are entitled to credit, their testimony should have great weight with the jury†."

The credit of a *witness* can only be impeached by general accounts of his character and reputation; not by proofs of particular crimes, of which he was never convicted. And, therefore, it has been repeatedly ruled that, where a witness is impeached

* Mac Nally's Rules of Evidence, 322, 323.

† The King v. Thelwell, Old Bailey, Special Commission Oyer and Terminer, 1794. Mac Nally, 323.

in character by the testimony of other witnesses, called for that purpose, the first question must go to shew, whether the party impeaching be acquainted with the general character of the other witness, and if he answers in the affirmative, he may then be asked, whether such witness be a person deserving credit in a court of justice, upon his oath *.

It is also a general rule, that a party shall never be permitted to bring general evidence to discredit his own witness.

It was so ruled by the House of Lords, in the case of Governor Hastings, on an impeachment for high crimes and misdemeanors (1789), on this principle, that admitting such evidence would enable the party to destroy the evidence of the witness, if against him, and to make him a good witness, if he spoke for him; it would, in other words, be compelling the witness to speak as the party wished him, because if he did not his credit might be destroyed.

But, if a witness prove facts in a cause, which make against the party who calls him, the party may adduce other witnesses, to disprove his testimony in those particulars †.

* On the above rule, several cases are quoted in Mac Nally's Rules of Evidence, 324.

† Bull. N. P. 297. Mac Nally's Rules of Evidence, 325.

No counsel, or other person intrusted with the secrets of the cause by the party himself, shall be compelled, or perhaps allowed to give evidence of such conversation or matters of privacy, as have come to his knowledge by virtue of such trust and confidence *.

This is the privilege of the *client*, and not of the counsel or attorney; and it is founded on the policy of the law, which will not permit any person to betray a secret, with which the law hath entrusted him †.

But the general rule seems derived from hence; that formerly, in the simpler state of society and laws, persons appeared for themselves and conducted their own claims and defences, without needing the assistance of men educated to the formal practice of the law. When the extension of property, the increase of laws, the magnitude, number, and subtilty of legal questions rendered this no longer safe or practicable, the attorney, as the name indicates, became the legal representative of his client in the cause. The answer of the agent was the answer of the principal; and whatever the party could have done personally was conclusive, when transacted in his place by his legal proxy. It was therefore conversely just, that the attorney should neither be com-

* Law of *Nisi Prius*, 276. Black. Com. vol. iii. p. 370.

† Bull. N. P. 284.

pelled nor permitted to answer questions pointed at the disclosure of facts, which to divulge would be inconsistent with the nature of such a representation, or of that kind which the party could not have been obliged to answer * ; but any counsel, attorney, or other person may be examined as to mere matters of fact which might have come to his knowledge, without being intrusted in the cause †. Consequently, the judge advocate, or the person officiating for him at courts martial, may be examined as a witness for either party as to matters of fact previously known, and, after having the usual oath administered to him as a witness by the president, and having given his testimony, he may resume the functions of his office on the trial.

The prosecutor, or party accused, may take exceptions to the competency of a witness, which are to be publicly stated and inserted in the minutes; the court will then decide on their validity.

All witnesses, therefore, of whatever religion or country, who have the use of their reason, are to be received and examined, except such as are *infamous*, or such as are *interested* in the event of the cause. All others are *competent* witnesses, though the jurors, from other circumstances, will judge of their *credibility* ‡. *Hale* holds that Jews, who own only

* Reading on the Statutes, Geo. II. by Rayner, 111.

† Black. Com. vol. iii. p. 370.

‡ Ibid. p. 369.

the Old Testament, are admissible witnesses; they being sworn on the *Old Testament*, instead of the *New*, to depose the truth, the whole truth, and nothing but the truth*.

On the ground of *necessity*, *sound policy*, and *special circumstances*, a PAGAN or INFIDEL, of any description whatsoever†, sworn according to the ceremonies of the religion which he professes, is an admissible witness, in a cause civil or criminal. And Hale observes, on the *necessity* and *sound policy* of admitting a pagan or infidel as a witness, that it would be a very hard case if murder, committed here in England, in the presence only of a Turk or of a Jew, who owns not the christian religion, should be punishable, because such an oath should not be taken which the witness holds binding, and is the only form in which he can swear; while possibly he might think himself under no obligation, if sworn according to the usual style of the courts in England. But then it is agreed that the *credit* of such a witness must be left to the jury‡.

The form of oaths varies in countries, according to different laws and constitutions; but the substance is the same in all.

By the practice of England, and of all the nations in the world that are christians, persons, though not of

* 2 Hale, P. C. 279.

† Mac Nally's Rules of Evidence, p. 64.

‡ 2 Hale, P. C. 279.

the christian persuasion, may be admitted as witnesses, and sworn according to their own form.

After the Roman emperors were converts, christians, as well as those who continued pagans, swore according to their fancy, without any particular form. The corporal part, which prevails now all over christendom, was taken from the pagans; and by degrees, under the Greek-Roman emperors, it came to be established that this ceremony should be used *.

The corporal ceremony is mere matter of form, and not of the essence of an oath. The monks formerly swore by kissing the feet of the abbots, and the abbots swore by their word only, from whence the expression *in verbum sacerdotis*: this shews it has varied much, and is merely form †.

We find that persons professing the Gentoo religion have the oaths administered, in the courts of justice erected by letters patent in the East Indies, in the following manner: the several persons as witnesses being before the judges, with a bramin priest of the Gentoo religion, the oath prescribed to be taken is interpreted to each witness respectively; after which they severally with their hands touch the foot of the bramin priest. The oath prescribed to be taken by

* Seld. tom. ii. f. 1467.

† Du Fresne's Glossary.

the witnesses is also interpreted to him, after which he touches the hand of another bramin priest, then and there present.

The law, respecting the admissibility of pagans &c. to give evidence, was in the case of *Omychund*, a native of Bengal, against *Barker*, elaborately argued and finally determined *. The judges there agreed that, upon the principles of the common law, there is no particular form essential to an oath to be taken by a witness ; but, as the purpose of it is to bind his conscience, every man of every religion should be bound to that form which he himself thinks will bind his conscience most. Therefore, though the christian oath was settled in very early times, yet Jews, before the 18th of Edward I. when they were expelled the kingdom, were permitted to give evidence, and were sworn, not on the *Evangelists*, but on the *Old Testament* ; and no distinction was taken between their swearing in a *civil* and *criminal* case.

So a *Turk* or *Mahometan* may be sworn on the *Koran*, as a witness in criminal cases. The manner, in which this is usually done, is by producing an *Alcoran* before the witness in court. The witness first places his right hand flat upon it, puts the other hand to his forehead, and brings the top of his fore-

* Mich. 1744.

head down to the book, and touches it with his head; the oath is then interpreted to him.

A singular custom prevails in China in administering an oath, namely, the wringing off the head of a cock, when about to take an oath. This they consider as a sort of incantation. After a Chinese has wrung off the cock's head, he raises up his hands towards heaven, and uses these words; "If I act otherwise than as I have said, do thou, O TIEN! deal with me as I have dealt with this cock *!" This seems to be precisely the same custom, which is well known to have been used among the Romans on similar occasions.

We find that, on a very recent trial at the Old Bailey (December 5, 1804), in administering an oath to a Chinese, a custom somewhat analogous to that mentioned by Mr. Barrow was practised.

Ann Alfey was capitally convicted for stealing in a dwelling house seventeen Spanish dollars, the property of — *Erpune*, a Chinese mariner.

The first witness examined was M. Anthony, a native of China, but many years resident in England; a christian, and a protestant of the established church. He said that he was the person appointed, by the East India Company, to superintend the Chi-

* Barrow's Travels in China.

nese sailors, who come over in the company's ships, until they set out again on their return to China. He had come to this country when eleven years old ; has been since in China, and has seen and knows the manner of administering oaths in the courts of justice in his own country, which he described to be by the witness breaking a saucer to pieces, and appealing thereby to the Supreme Being whom he worships, that his own body may be broken to pieces if he tell a falsehood.

Mr. Baron GRAHAM, who was exceedingly minute in his interrogatories on this point, said it was quite sufficient, to the laws of this country, that a witness gave his testimony under the same solemnities usual in his own country ; and for the truth of which he felt himself answerable, to the Supreme Being whom he worships.

Anthony was then deputed to put the oath to Erpune, and sworn as his interpreter, to repeat faithfully his evidence to the court. Erpune then took the saucer, which Anthony gave him in his right hand, struck it thrice against the hand-rail of the evidence box, and broke it in pieces ; appealing, with uplifted eyes and hands, to the Supreme Being whom he worshipped, that his own body might be so broken to pieces if he told a falsehood.

But an *atheist*, who professes to have no belief in the existence of a God, and of course disbelieves a

future state of rewards and punishments, cannot be a witness. For persons, denying the Divine Being and attributes of the Deity, cannot consider themselves bound by the obligation of an oath; and therefore, not deserving credit, they are incompetent*.

A person having no idea of a God or religion, who is altogether ignorant of the obligations of an oath, the existence of another world, and of a future state of rewards and punishments, ought not to be sworn.

It is necessary to remark that, where the objection to competency is grounded on the infidelity of the person produced to be sworn, the proper question to be asked by the court is, not whether he believes in JESUS CHRIST, or in the *holy gospels* of GOD, but whether he believes in GOD, the obligation of an oath, and a future state of rewards and punishments†.

Dissenters from the church of England, as by law established, may be sworn according to the form and ceremony of their own particular sect.

On the trial of the rebels at Carlisle, in 1745, on the reference of a case to the twelve judges, they

* Bull. N. P. 192. 1 Atk. 45. 3 Leach's Cr. Cases, 3d edit. 64. 72.

† Peake's Reports of Cases at N. P. 11.

gave it as their opinion that a dissenter from the church of England, or a covenanter of the church of Scotland, might be legally admitted as a witness to swear by the form of holding up his hand, without touching the book or kissing it *.

Lord Mansfield cites this case of the rebels as law †.

On the authority of this case we find that, on the trial of *Christiana Fitzpatrick*, indicted for *Larceny*, Old Bailey Sessions, February 1786, a Scotch covenanter, produced as a witness, was sworn in the following form: "You swear, according to the custom of your country and the religion you profess, that the evidence you shall give between our sovereign lord the king, and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth ‡."

Lord *George Gordon*, before he turned Jew, was sworn in the same manner, exhibiting articles of the peace in the King's Bench §.

It is usual to swear Roman catholics, produced as witnesses, on the holy Evangelists, with a crucifix or

* The usual form of administering oaths to witnesses, in civil and criminal cases, in the courts of justice in Scotland, has been already noticed, c. ii. p. 37.

† *Atcheson v. Everitt*. Cowp. 390.

‡ *Leach's Crim. Cases*, 3d edit. 459.

§ *Mac Nally's Rules of Evidence*, p. 97.

cross on it, and the witness is made to kiss the cross, while with his right hand he holds the book *. It is the practice, of the courts of justice in Ireland, to swear in this manner persons of the above persuasion.

Persons excommunicated cannot be witnesses; because, by the laws of the church, such persons are excluded from human conversation †.

By statute, the affirmation of a quaker shall be admitted in civil cases; but it is enacted that no quaker, nor reputed quaker, shall be qualified or permitted to give evidence on his affirmation, in any criminal causes, &c. ‡

This is strictly conformable to the principle that all persons, examined, in criminal cases, must be examined on oath, both for and against the crown. The form or ceremony matters not, so long as it is a solemn appeal to the Deity, for the veracity of what the witness shall say, and invoking his vengeance if he utter what is false.

In civil suits we find, by the statute law, that a quaker's testimony is admissible upon the simple affirmation, "I do solemnly, sincerely, and truly

* This ceremony is frequently practised at naval courts martial, when the witness has declared himself a catholic.

† Bull. N. P. 292. Black Com. 102.

‡ Stat. 19 Geo. II. cap. 18. section 1, 2, 3.

declare and affirm *.” The policy therefore of not admitting this solemn affirmation, on the same footing as an oath in all criminal cases, has at times been doubted, by the highest legal authorities. *Lord Mansfield* was of opinion that, on general principles, the affirmation of a quaker ought to be admitted in all cases, as well as the oath of a *Jew* or *Gentoo*, or of any other person who thinks himself really bound by the mode and form by which he attests † : That the experience of eight-and-twenty years, from the restoration to the time of the revolution, shewed that the obstinacy of quakers in refusing an oath was not merely a pretence, or colour given to right and wrong, but that it was a deep-rooted *scruple* of conscience, and that the sect was ready to go through all kind of suffering, in their pertinacious adherence to it. A more liberal way of thinking prevailed after the revolution ; the principles of toleration were explained and justified, in consequence of the writings of *Mr. Locke*, *Lord Somers*, and other great men of those times : and a statute passed, which, though not general, was very extensive in the relief it afforded to scrupulous consciences, called the *Toleration Act* ‡.

The tenth section of that statute enables quakers to give assurance of their fidelity and allegiance to the state, by *form of oath*, different from that pre-

* 8 Geo. I. cap. 6.

† The Case of *Atcheson v. Everit*. 1 Atkyns, 21.

‡ 1 William and Mary, c. 18.

scribed by the law of England to other christians. It is a form of oath ; because it is appealing to the DEITY for the veracity of what they shall say, and invoking his vengeance if they utter what is false.

In six years after, another statute allowed a quaker to *affirm*, in cases where other persons are required to take an *oath* *. *Lord Mansfield* then stated the case of *Omychund and Barker*, and that of the *rebels at Carlisle*, already noticed.

Now all persons, examined in criminal cases, must, by the statutes, be examined on oath, both for and against the crown †. Therefore, if a *quaker* be indicted, he cannot have the benefit of a quaker's testimony.

Nor is a quaker's evidence admissible, on a motion for an information for a misdemeanor.

As in the KING v. GARDNER ; the affirmation of a quaker was offered in exculpation of the defendant, in shewing cause why an information should not be granted against him, for a misdemeanor. This being objected to ; the court held that a quaker's affirmation could not be read, in support of a criminal charge. But they thought that an affirmation might be read in *defence* of a criminal charge,

* 7 and 8 William and Mary, 3. cap. 34.

† Stat 1 Anne, 2. cap. 9. 19 Geo. II. cap. 18. sect. 3.

if the person charged was *himself* a quaker, in order to exculpate himself*.

The result of all the modern decisions gives this general rule: that, where the form is *civil*, though the subject may be *penal*; or where the form is *criminal*, but the object a *civil* remedy, the evidence of a quaker shall be admitted; being excluded in proper *criminal* causes, where the *form* and the *object* both denominate the suit a prosecution for a public offence†.

Infamous persons are such as may be challenged, *propter delictum*. As, for conviction of treason, felony, perjury, piracy, forgery, or conspiracy, or if, for some infamous offence, a witness hath received judgment of the pillory, or the like, or hath been branded, whipt, or stigmatized, or if he be outlawed or excommunicated‡, these are all exceptions admitted by law to the competency of a witness.

According to modern authorities, it is the infamy of the *crime* and not the *punishment*, which disquali-

* Mac Nally's Rules of Evidence, 103.

† Ibid. 104.

‡ The same challenges *propter delictum*, are made to jurors as to witnesses. Black. Com. vol. iii. p. 363, and 370. But, as the punishment of whipping has not that degree of infamy annexed to it, when adjudged by courts martial or military discipline, as when adjudged by courts of law, it therefore, at courts martial, cannot affect the competency of a witness, in the same manner as at courts of law.

fies from being a witness : and, therefore, persons stigmatized by an infamous punishment, such as being set in the pillory, are admissible witnesses ; unless the punishment was inflicted for *forgery*, *perjury*, or other species of the *crimen falsi* or other crime of an *infamous* nature *. The common punishment, that indicates the *crimen falsi*, is being set in the pillory : and, therefore, they anciently held the law to be that no man, legally set in the pillory, could be a witness ; for they thought it a ridiculous thing, and boding ill to a cause, when a person thus stigmatized appeared in court to attest any thing. But the rigour of this maxim is reduced to reason : for now it is held that, unless a man be put in the pillory for *crimen falsi*, as for perjury, forgery, or the like, it is no blemish to a man's attestation ; for a man may be pillored for speaking scandalous words of the government, which yet, in doubtful or factious times, ought not to be taken as a presumption against his common credibility, *ex delicto, non ex supplicio emergit infamia* †.

A person convicted of *petit larceny* was held to be an incompetent witness ‡, in the case of Mackender, Hillary, 1755, Common Pleas. But, it has been since enacted that a conviction of *petit larceny* shall not incapacitate the party convicted, from being a competent witness §.

* 2 Hawk. P. C. cap. 46.

† Gilb. Evid. by Lofft, 257.

‡ 3 Wilson's Rep. 18.

§ 31 Geo. III. cap. 35.

Judgment for an infamous crime, which renders a man incompetent as a witness, doth not disable him from making an affidavit in defence of a charge brought against himself. Yet, such a person would not be allowed to support a complaint, or to do other acts of a judicial nature upon his own oath *.

Whenever the competency of a witness is objected to, on the charge of conviction and judgment for an infamous crime; the party making the charge must produce in court the record of the judgment†. And this rule results from the general and prevailing principle, that the best evidence, which the case admits of, must always be produced.

The only method. of supporting an objection to such witnesses as are infamous, is to prove it immediately in court, by the record of conviction, or otherwise; for no questions can be put to a witness to criminate himself, or that may in any way tend to prove his own infamy ‡.

Hawkins considers it a general and established rule that, in all cases whatsoever, a person who is either to be a *gainer* or a *loser* in the event of the cause, in which he is called to give evidence, whether the advantage or disadvantage be direct and imme-

* Mac Nally's Rules of Evidence, 211, 212.

† 2 Hawk. P.C. cap. 46. 4 State Trials, 175.

‡ State Trials, vol. iii. f. 256, 680. Black. Com. vol. iii. p. 370.

diate, or consequential only, is incompetent and cannot be examined*. But *Hale* doth not state this rule so strongly, nor so generally, as *Hawkins*. He says a man, in point of *interest*, is not a lawful accuser or witness in *many* cases.

This rule, though universal in civil matters, does not, with the same strictness, extend to criminal cases; for, in the latter, witnesses, though apparently *interested*, are admitted from necessity: and the true and most general principle which governs this distinction is, that it concerneth the community that crimes should not pass wholly unpunished, and, were the party injured not to prosecute, few others might have the certain knowledge of the fact, or the disposition of bringing it to trial †.

In an indictment for *perjury*, on the *statute*, the person injured cannot be a witness, because the *statute* gives him ten pounds; but, in an indictment at *common law*, the party injured may be a witness ‡.

Where rewards are given by statute, for apprehending or convicting persons charged with particular offences, as robbery on the highway, &c.

* 2 Hawk. Pleas of the Crown, 46. Coke Litt. 6.

† Gilbert's Rep. 113.

‡ Stat 5 Eliz cap. 1. 3 Geo. II. cap. 4 and 2 Hawk. P.C. c. 46. Bull Nisi Prius, 289. Mac Nally's Rules of Evidence, 144.

the persons apprehending and prosecuting, with a view to those rewards, are competent witnesses *.

So, where a reward is offered by the royal proclamation from the king in council, persons prosecuting, in expectation of such reward, are admissible. So ruled at the Old Bailey, on the trials of the rioters, 1780.

In civil cases, as already noticed, it is a settled rule of law, clearly established, that if a witness be interested, he is incompetent to be examined. But in criminal cases, for the safety of the public, getting reward does not, in a court of criminal jurisdiction, disable a witness from giving testimony, though it may go to affect his credibility †.

It is no good exception to the competency of a witness that he hath received a reward, for having

* Stat. 3 and 4 Will. 3. cap. 8. 5 Ann. cap. 31.

† Among the Romans, in the reign of *Tiberius*, it was enacted, that whoever convicted a person of any public crime, incurring degradation or forfeiture, should be entitled to succeed to the dignity, whether of citizen, knight, or senator, from which the criminal was degraded. And, lest even this consideration should not be sufficient to excite prosecutors, it was enacted, that a fourth part of the estate of the person convicted, should be joined to the reward.

The office of an accuser, proceeding in any degree from mercenary motives, must have become, in a high degree, odious and contemptible. *Ferguson's History of the Progress and Termination of the Roman Republic*, vol. iii. p. 508. 4to.

made a discovery of the crime to be proved against the prisoner: Or, that he hath had the promise of a pardon or other reward, on *condition* of giving his evidence, unless such reward be promised by way of contract, for giving such and such particular evidence; or full evidence, or any way in the least to bias him to go beyond the truth; which not being easily avoided in promises or threats of this kind, it is certain that too great caution cannot be used in making them*.

Hale, however, is of opinion, that if an accomplice be promised pardon, on condition to give evidence against the rest, that renders him incompetent; because he is bribed, by saving his life, to be a witness: on which *Kelyng* observes that *Hale* takes a difference, where the promise of a pardon is to the accomplice for disclosing the treason, and where it is for giving evidence†. This opinion of *Hale* is over-ruled by the judges, in a variety of decisions. On the trial of Christopher Layer, Esq. (B. R. Michs. 9 Geo. I.) indicted for high treason, the prisoner's counsel objected to the evidence of Stephen Lynch, and desired he might be examined on the *voire dire*, whether he had a promise of pardon, or some other reward for swearing against him. But the judges solemnly decided that the promise of pardon was no objection, either to his competency or to his

* 2 Hawk. P. C. cap. 46.

† 2 Hale's P. C. 304. 2 Ibid. 280. *Kelyng*, 18.

dit; and the witness was admitted to give his testimony*.

The king's pardon for a treason or felony, after conviction or attainder, restores the party to his competency; and does so far clear the party, convicted or attainted, of the infamy and all the consequences of his crime, that he may not only have an action for scandal, in calling him traitor or felon, after the time of pardon, but may also be a *good witness*: because the pardon makes him, as it were, a new man, and gives him a new capacity and credit †.

In the case of *Thomas Reilly*, tried at the Old Bailey, July Session, 1787, it appeared that *John Macdaniel* had been convicted on stat. 31 Geo. II. c. 10. which makes it felony, without benefit of clergy, to take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or letter of administration, in order to receive officers' or seamen's wages, pay, prize-money, &c.

In the course of the trial of *John Macdaniel*, it was discovered that *Thomas Reilly*, who appeared as a witness, had taken advantage of the prisoner's ignorance, and had suborned him to commit the offence.

* 6 State Trials, 257.

† 2 Hawk. P. C. c. 37 and 46.

Thomas Reilly was accordingly committed to take his trial, and no judgment was passed upon the prisoner *John Macdaniel*.

On the trial of the indictment against *Reilly*, for procuring *Macdaniel* to take the said false oath, the latter was produced as a witness on the part of the crown. The counsel for the prisoner produced the record of his conviction, and submitted to the court, that his competency was thereby destroyed; notwithstanding the conviction had not been followed by a judgment. But the counsel for the crown pleaded his majesty's pardon in bar, and it was regularly allowed.

The question, therefore, was, "whether a special pardon, granted after a conviction on this statute, but pleaded and allowed in bar of the judgment, restored the witness to his competency? or, whether it only remitted him from the punishment to which he would have been liable, in consequence of an attainder?"

The court were clearly of opinion, that, in cases of felony, a pardon from the crown restores the competency of the convict; and that the verdict against *Macdaniel* was to be considered as a conviction of a *felony*, committed through the medium of perjury, and not as a conviction of *perjury* itself. The testimony of *Macdaniel* was accordingly received in evidence, and the jury found *Thomas Reilly*

Reilly guilty of the *offence*, with which he stood charged in the indictment. But the judgment was respited, and the case submitted to the consideration of the *Twelve Judges*.

Mr. Justice Wilson, in June Session 1788, after stating the particulars of the case, as above recited, delivered the opinion of the judges to the following effect :

The learned judge, who tried this indictment, entertained some doubt respecting the competency of *Macdaniel's* testimony. The case was accordingly reserved for the consideration of the JUDGES; and they are of opinion that, if *Macdaniel* had not received his majesty's pardon, some doubt might have been entertained; but, as he was pardoned, and that pardon regularly allowed, they are clear that it not only respites the convict from punishment, but entirely absolves him from the crime, and restores him completely to his former competency and credit. The case of *Cuddington v. Wilkins*, in Lord Chief Justice Hobart's Reports, is precisely in point, and decisive of the question; for it is there expressly determined that the king's pardon doth not only clear the offence itself, but all the dependencies, penalties and *disabilities* incident to it. The JUDGES, therefore, are of opinion that the testimony of *Macdaniel* was properly admitted in evidence; and that *Thomas Reilly*, the prisoner at the

VOL. II. I bar,

bar, has been legally convicted on this indictment. The prisoner received sentence of death *.

The above case seems conclusively to settle the question ; whether the king's pardon, generally, restores the competency of the convicted party. Hawkins, also, and other writers are decidedly of the same opinion †, and lay it down that the king's pardon restores the reputation ; that, the loss of reputation being part of punishment, the king's pardon, which can take off the whole punishment, must necessarily restore reputation ; and that the king, as constitutional guardian of the life, liberty, and estate of his subjects, is the best judge of the consequence of his pardon.

Interested witnesses may be examined upon a *voire dire*, if suspected to be secretly concerned in the event ; that is, an oath *veritatem dicere*, to answer all such questions as the court shall demand, relative to their interest in the point at issue : or, their interest may be proved in court. This examination, which is for the purpose of impeaching the witness's competency, and thereby preventing him from being sworn in chief, is allowed in *criminal* as well as in *civil* cases.

In civil matters, the objection to competency, in strictness, should be made upon the *voire dire* before

* Leach's Cr. C. 2d edition, 361. 3d ed. 512.

† 2 State Trials, 269. 3 Ibid. 552. 553. 585. 610.

4 Ibid. 610. Gilb. Evid. by Lofft, 260.

the witness be sworn in chief. But, in *criminal* cases, whenever the incompetency of a witness appears, the court will arrest his evidence, and the judges and jurors will discharge their minds from his testimony.

It is not a valid exception against a witness that he is an accomplice in the crime charged against the prisoner; for, by virtue of several statutes*, some one of the accomplices in all crimes, excepting only *murder* and *treason*, and of them also, in the case of coining†, may be admitted to become a witness (or, as it is generally termed, *king's evidence*) against the party or parties accused: and this from the necessity of the case, and upon an implied confidence which the judges of courts of law have usually countenanced and adopted; that, if such accomplice make a full and complete discovery of that, and of all other crimes or offences, to which he is examined by the judges, and afterwards give his evi-

* Stat. 4 and 5 William and Mary, c. 8. 6 and 7 William and Mary, c. 17. Stat. 10 and 11 William III. c. 23. 5 Anne, c. 31. and 29 George II. c. 30. which enact that, if any such offender, being out of prison, shall discover two or more persons who have committed the like offences, so as they may be convicted thereof; he shall, in case of burglary or house-breaking, receive a reward of 40/. and in general be entitled to a pardon of all capital offences excepting murder and treason, and of them also in the case of coining. Blackstone's Com. vol. iv. p. 331.

† The pardon for discovering offences against the Coinage, Act of 15 Geo. II. c. 28. extends only to all such offences. Black. Com. v. iv. p. 331.

dence without prevarication or fraud, he shall not himself be prosecuted for that, or any other previous offence of the same degree*. Were not this to be the case, the greatest offenders would frequently escape unpunished, from a want of sufficient evidence.

The rules of evidence which apply to *accomplices*, or, as the ancient law termed them, *approvers*, are now comprised under the following principal heads:

1. An *accomplice* or *approver*, though he has confessed himself a felon, and of course infamous; and though liable to be hanged for the crime he confesses, if he fail to convict the person accused, but certain of pardon if he succeed, is, notwithstanding, a *competent* witness.

2. The *confession* of an *accomplice* in *treason* or *felony*, that he has been guilty of the crime charged upon the prisoner, by acting as an *accomplice* with him, is no objection to his competency as a witness, *if he has not been indicted*, but goes merely to his credit†. If no accomplices were to be admitted, it would generally be impossible to convict the greatest offenders.

3. As, on an indictment for felony, a prisoner, by the rules of the common law, may be found guilty on the uncorroborated evidence of a single

* Black. Com. vol. iv. p. 331.

† 2 Hawk. P. C. ca. 46.

witnesses; so, if the court or jury believe the testimony of an *accomplice*, though such testimony stands totally uncorroborated, a prisoner may be found guilty of a capital crime *.

4. *Accomplices* who are *indicted* are good witnesses for the king, until they be convicted for the crime wherewith they stand charged. This rule has not only been laid down by Hawkins, in his Pleas of the Crown, but in cases referred to the twelve judges, they have unanimously been of opinion, that the law alloweth every one to be a witness, who is not *convicted*, or made infamous for some crime †.

5. A promise of *pardon* to an accomplice doth not affect his competency, on the trial of the party accused by him. An *approver* is insured his pardon, if he make good his accusation against the accused; so, by analogy, it appears that a promise of pardon to an accomplice does not affect his *competency*, but goes merely to lessen his credit with

* In the case of James Atwood and Thomas Robbins, tried at Bridgewater, county of Somerset, summer assizes 1788, and indicted for a robbery on the highway, they were convicted on the evidence of an *accomplice*. But Judge Buller, who had tried the prisoners, having his doubts respecting the propriety of the conviction, referred the case to the consideration of the twelve judges, who were unanimous in opinion, that an *accomplice* is a *competent* witness, and that if the jury, weighing the probability of his testimony, think him worthy of belief a conviction, supported by such testimony *alone*, is perfectly legal. *Leach's Crown Cases*, 3 ed. 521.

† 2 Hawk. P. C. ca. 46. and Kelyng, 17.

the court or jury * ; so it was ruled in the case of the *King v. Christopher Layer*, Mich. 9 Geo. I. *Banco Regis*.

Sir *Mathew Hale*, in his Pleas of the Crown, holds a different opinion, in which he says “if a reward be promised to a person for giving his evidence before he gives it, this, if proved, disables his testimony. And, for my own part, I have always thought that, if a person hath a promise of a pardon, if he give evidence against one of his own confederates, this disables his testimony, if it be proved upon him †.”

6. An accomplice may give evidence before a grand jury, to support an indictment against a *particeps criminis* ; and the bill found is good, although the accomplice was not previously admitted an evidence for the crown ‡.

This rule was confirmed by the opinion of the twelve judges, in the case of the Rev. William Dodd, indicted at the Old Bailey February Session, 1777, for forgery. As the names *William Dodd* and *Lewis Robertson*, were both to the bond, and to a receipt, as attesting witnesses of the signature *Chesterfield*, they were charged with being equally guilty of the forgery ; and, from the evidence given against them before the magistrate, he committed them as principal felons to Newgate.

* Mac Nally's Rules of Evidence, 200.

† 2 Hale's P. C. 288.

‡ Mac Nally's Rules of Evidence, 201.

The indictment was preferred against William Dodd; and Lewis Robertson gave evidence to support the said indictment before the grand jury. Dodd, on being arraigned on this indictment, objected by his counsel to the competency of Robertson, and the case being referred to the judges, they were of opinion, that the proceedings upon that indictment were legal, and that the prisoner was convicted according to law *.

7. The admitting an *accomplice* as a witness for the crown, is not a matter granted of course by the court, but depends upon the question, whether the indictment can be found and supported without his evidence? †

8. It has been an almost invariable rule of clemency with the judges that, unless some fair and unpolluted evidence corroborate and give verisimilitude to the testimony of an *accomplice*, they recommend to the mercy of the crown, a prisoner convicted under such circumstances ‡. And this principle of mercy, and the rule that the objection to the evidence of a *particeps criminis* affects his *credit* only, but does not bar his *competency*, was long since promulged by that most

* Leach's Crim. Cases, 3 ed. 184.

† Mac Nally's Rules of Evidence, 203.

‡ Ibid. 203.

excellent judge Sir Mathew Hale, who saith, “that though a *particeps criminis* be admissible as a witness in law, yet the *credibility* of his testimony is to be left to the jury; and truly it would be hard to take away the life of any person upon such a witness that swears to save his own, unless there be also very considerable circumstances which may give the greater credit to what he swears*.

9. In misdemeanors, parties indicted separately from the party on trial, or not indicted, though concerned in the transaction, are *competent* witnesses, and the same rule holds good in many species of civil action, where the witness is not made a defendant. Thus if A. and B. be indicted for assaulting the same person, and tried separately, they are good witnesses for each other. So where A. B. and C. are sued on three several actions, on the statute for a supposed perjury, in their evidence concerning the same thing; they may be good witnesses in such actions for one another†,

A good exception, to the competency of a witness, is his defect of intellects, or being *non compos mentis*. But as a lunatic, or *non compos mentis*, is defined one who hath had understanding, but by disease, grief, or other accident, hath lost

* 1 Hale, P. C. 305.

† 2 Hawk. P. C. ca. 46. Mac Nally, 204.

the use of his reason *, and is supposed to enjoy his senses at times; he may, in those lucid intervals, be admitted as a witness, but it is a difficulty, not easily got over, to ascertain with precision what is the *minimum quod sic* disables the party †.

If an infant be of the age of fourteen years, he is, as to this purpose, of the age of discretion to be sworn as a witness; but if under that age, yet, if it appear that he hath a competent discretion, he may be sworn ‡. And therefore, in some cases, an infant of nine years of age has been allowed to give evidence. For though under *fourteen*, yet if he be intelligent, or *the nature of the fact*, may allow an examination of one under that age, he may be examined upon oath as a witness. And the like hath been done in cases of sodomy with a boy under fourteen years of age. Hale and Hawkins observe that surely, in some cases, one under the age of fourteen years, if otherwise of a competent discretion, may be a witness in case of treason ||.

It is now a settled rule of law, on trials for rape and sodomy, that, if an infant appear by an-

* *Idiota a casu et infirmitate*, (*Mem. Scacch.* 20 Edw. I. in Maynard's Year Book of Edw. II. 20.)

† Hale's P. C. 278.

‡ Ibid.

|| 1 Hale's P. C. 302. 2 Hawk. P. C. cap. 46.

swers,

wers, propounded by the court for the purpose, to entertain a sufficient sense of the danger and impiety of swearing falsely, she or he may be sworn and examined at any age.

A person deaf and dumb, to whose mind has been conveyed the knowledge of a DEITY, and a belief of rewards and punishments, may be examined as a witness, through the medium of a person capable of conversing with him by signs*. In the case of *Elizabeth Steele*, tried at the Old Bailey May Sessions, 1787, it was held by the twelve judges, that a prisoner, mute by the visitation of God, on the fact being found by a jury, may be tried, found guilty, and sentenced †.

Peers of the realm, when adduced as witnesses, are not exempted from taking an oath, but must be sworn in civil or criminal cases, in the same manner and form as other witnesses are. For the respect, which the law shews to the credit of a peer, does not extend so far as to overturn a settled maxim, that *in judicio non creditur nisi juratus* ‡. A peer has no stronger claim to privilege, when called upon as a witness, than a commoner, and must give full and unreserved answers to all ques-

* Mac Nally's Rules of Evidence, p. 157.

† 3 Leach's Crown Cases, 3 ed. 507. 2 Hale's P. C. 317.

‡ 1 Black. Com. 402.

tions put to him relative to the points in issue, which a commoner would have been bound to answer *.

All relations, except husband and wife, as parents, children, brothers, uncles, &c. are competent to give evidence against each other †. And dreadful as the idea is, yet, even in capital cases, a parent may be called on to give evidence against a child, a child against a parent, or children of the same parents against each other! At the same time, relatives in every degree are competent to be produced as witnesses for the prisoner. The bias which a father is presumed to be under, to give testimony in favour of his son, does certainly go to his *credit*; but a father is in *all* cases a *competent* witness for his son, if he have not a vested interest in the question ‡.

In many cases, exceptions may be made to the credibility of a witness, but whose competency is admissible; that is, who may be admitted to be heard, and yet, after having been heard, may prove not to be credible, or such as the members of a court martial are bound to believe, and of which they

* 11 State Trials, 246.

† Co. Litt. 6. Mac Nally's Rules of Evid. 181.

‡ 1 Will. 332. Sawyer, 45. S. C. Mac Nally's Rules of Evidence, 182.

can always judge by some concurrent testimony of time, place, and circumstances, in order to make out the fact, and establish the credibility.

With respect to the number of witnesses to be examined, on the part of a prosecutor at a court martial, they are not limited by law ; but it would be to no good purpose to call too many to establish the same facts, which could only tend unnecessarily to protract the trials, and perhaps ultimately to elude the justice of them *.

The members of a court martial may, however, under particular circumstances, exercise their discretion in calling any witness before them, from whom they have reason to think the truth may be obtained, whether adduced by the prosecutor or not ; but it might be considered as a very hard and improper exercise of that discretion, indeed we would rather regard it as illegal, if, when a prisoner is standing upon his trial, the court should adjourn the proceedings to a distant day, in order to enable a prosecutor to bring forward a fresh witness. If any person at hand, and who can without delay be called upon, is supposed to be capable of giving material testimony, undoubtedly the court may require his attendance, and examine him ; and this, it is imagined, will

* See Opinion of the Attorney and Solicitor Generals, Appendix, No. XXXIII.

not in any respect militate against the oath which they have taken, to try and determine according to their evidence. In a case of the nature alluded to, which occurred at a general court martial, held at Bastia in Corsica, (January 1795,) the deputy judge advocate objected to the summoning a new witness, after he had closed the prosecution; but the court stayed the proceedings, the witness was examined, and his evidence proved to be of moment. A question on the propriety of this measure was submitted to the judge advocate general, and he was of the opinion which we have now given *.

In criminal prosecutions, where there are several defendants on trial, and it appears, on closing the evidence on the part of the crown, that against one or more of them there has been no evidence to convict; the court will in its discretion direct an issue to go up to the jury, on the part of the defendant or defendants against whom no evidence had appeared; and, on a verdict of not guilty being recorded, will suffer such defendant or defendants so acquitted to give evidence, on the part of the prisoner or prisoners remaining on trial at the bar †.

On the trial of Captain Simon Fraser, and Ross a soldier in the same regiment, for the murder of

* Case stated to judge advocate general, and his opinion to query 2. Appendix, No. LXV.

† Mac Nally's Rules of Evidence, p. 56.

Christopher Dixon, *summer assizes, county of Kildare, at Athy, 1797*, the counsel for the prisoners moved, on the closing of the evidence on the part of the crown, that a separate issue should be sent up to the jury, suggesting that no evidence had appeared against the prisoner *Captain Frazer*, that could support the charge in the indictment. The issue was accordingly sent up to the jury, and, on bringing in a verdict of not guilty, Captain Frazer was sworn, and Ross was also acquitted*.

Persons involved in the same criminal charge are, upon sound principles of law, incompetent witnesses for one another; because, from the infirmity of human nature, it is to be presumed that they would mutually acquit by false testimony: but when a person is, by mistake or from design, involved in the same criminal charge with another, and is not affected materially by the evidence for the prosecution, or where he may appear to be wholly exculpated of the charge, the principle of *incompetence* does not apply; because such a person can have no interest as a witness, but that of justice.

It is therefore the invariable rule of English criminal courts (as in the case of Captain Frazer) to acquit such a prisoner in the first instance, in order to remove the technical objection arising from his being a defendant on the record, and then to admit his evidence as an indifferent witness.

* Mac Nally's Rules of Evidence, p. 56, 57, &c,

This practice not being the form alone, but the *essential substance* of justice, must necessarily apply to naval and military courts martial, and to all criminal courts, and no usage ought to controul or supersede it. Indeed the rules of evidence being founded upon the immutable principle of justice, and established for the discovery of truth, can never vary with the forms and jurisdictions of courts; and the practice of the courts of common law in England, not only upon the footing of authority, but on principles of wisdom, is the standard for all courts, civil or military, to resort to in matters of testimony. Courts martial, therefore, should most scrupulously attend to the legal rules of evidence; and, with that view, we have with solicitude enlarged on this subject, by endeavouring to bring into a narrow compass every possible rule of legal evidence, requisite for the guidance of the many excellent officers and honourable men who may compose courts martial; and who, from their important stations, and variety of other duties, may be deprived of having access to the books and authorities herein occasionally quoted.

The discussion of a similar rule of evidence, to that last mentioned, has very seldom come before a naval court martial; we find, however, one instance directly in point, where the members thought themselves bound to *reject* the testimony of a prisoner,

soner, tried with others under the same charge, on the principle of its being the usage of courts martial. As the case alluded to is of great importance, we shall in this place give the outlines of it, and refer the reader to a more detailed account, contained in the opinions of the attorney general, solicitor general, and counsel for the affairs of the admiralty in the appendix *.

William Muspratt, Norman, Byrn, and seven others were tried together by a court martial, (summer 1792) under a charge of mutiny, on board his majesty's ship *Bounty*, Captain Bligh; also for desertion and running away with the ship. The evidence for the crown being closed, the prisoner Norman was not thereby materially affected. William Muspratt, when called upon for his defence, gave into court a written paper, praying that he might be permitted to call Norman and Byrn, whom he represented to be material witnesses for him, as it was the practice and usage in courts of criminal jurisdiction on shore, when a number of prisoners were tried together under one charge, and the evidence adduced on the part of the prosecution did not affect one or more, to acquit those not affected, and permit the other prisoners to call them as witnesses. The court cleared, and, on deliberating on

* See Appendix, No. XLVIII. sec. 1, 2, 3.

Muspratt's application, the members were of opinion, that they could not depart from the usual practice of courts martial, and thereby proceed to give sentence on any particular prisoner, until the whole of the defence of the prisoners was gone through.

Muspratt with five others, having been found guilty, were adjudged, by the sentence of the court, to suffer death. Norman, Byrn, and two others were acquitted. Muspratt presented a petition to the lords commissioners of the admiralty, praying their lordships would afford him an opportunity of laying his particular hard case before the throne for mercy; and that they would be pleased to give that countenance and support to such application, as to their lordships, under the circumstances of his case, should seem meet. In the body of his petition he stated the case above mentioned, and gave a copy of his written application to the court.

The admiralty deemed it expedient to lay the whole case before the attorney general, solicitor general, and counsel for the affairs of the admiralty and navy, for their joint or separate opinions, whether there were any objections to the carrying the sentence of the said court martial into execution, so far as respected the said William Muspratt, on the grounds stated in his petition.

The Attorney General Macdonald, (now Lord Chief Baron,) on giving his opinion, took an extensive and liberal view of the subject stated in this interesting case *. 1st, By considering, whether a prisoner, charged jointly with others of having committed a capital offence, has a right to require that the judge shall take the opinion of the jury on the cases of such other prisoners as he shall point out, conscious that the evidence does not materially affect them; and on this head he remarks that, if the practice be matter of sound discretion in the judge, proceeding upon his view of the materiality of the evidence given; and if (as the paper intimates) the practice in naval courts martial ought to be the same, the question then will be, whether the court, in the present case, exercised its discretion properly or improperly? of which (he adds) the lords of the admiralty, who have the minutes of the trial before them, are the proper judges.

2. The other view of the case (he observed) involves in it two questions of very considerable importance. 1st, Whether such a claim as that made by the prisoner, if it were made in a court of common law, must be allowed as matter of right? 2d, Whether, if that be the case, the same must necessarily be the case in naval courts martial?

* See Opinion, Appendix, No. XLVII. sec. 1.

Upon

Upon the true exposition of the law respecting those two points, will depend whether the sentence of death, pronounced upon the petitioner, ought or ought not to be carried into execution.

The attorney general then proceeds, with great diffidence, to recommend their lordships not to rely on any authority inferior to that of his majesty's proper council in such cases, namely, that which consists of the judges of the common law, as the question respects the legality of a trial, in which will depend the execution of a sentence of death; and because it is of importance to all future courts martial that it should be solemnly settled, whether they have the discretion which, in the present case, they have disclaimed, or if it be not matter of discretion, whether the prisoner can call upon them, of right, to decide the cases of others, in order to call them as witnesses, if they are acquitted? In the present case (he thinks) they will probably be the more inclined so to do; as the requisition of Muspratt is grounded upon the practice of the judges in their courts, the principles of which they are best acquainted with. But lest it should appear to the lords commissioners of the admiralty, that observations from inferior authority can be of any use, he then proceeds to state his own opinion, to the following purport:

That it depends upon the sound discretion of the judge, whether he will take the sense of the

jury upon particular prisoners, according as he shall think there is, or is not, any evidence given against them which ought to be left to the jury ; or, according as he shall be satisfied, from the nature of the case, that nothing can arise in the course of the defence of the other prisoners which may affect those upon which it is proposed to decide in the first instance : where, for example, the prosecutor has been manifestly misled by appearances ; or, where it is obvious that some were involved in the indictment, for the purpose of disabling them from being witnesses, and the like. But if there be any evidence on which the jury can deliberate, and which may receive confirmation by going through the whole case, the attorney general apprehended the judge would proceed and go through with the whole. In the present instance, the fact of Norman and Byrn having continued on board the Bounty was *primâ facie* evidence of their guilt ; how far this *primâ facie* evidence of their guilt (which would arise from the bare fact of their remaining in the Bounty) was done away before the petitioner was called upon to make his defence, can only be known to the court martial. The inconvenience at least of such a right existing, as that on which the petitioner seems to rely, may appear from supposing that his application had been complied with, and Norman and Byrn had been acquitted ; yet that, from the examination of witnesses, in the course of the prisoner's defence, their guilt had been established. This is a possible case,

case, and may serve to shew the difficulty of conceiving the practice of the courts of common law to rest on any other foundation than the discretion of the judge, guided by all the circumstances of the case, as it shall seem to him that the justice of the case will or will not be best attained by deciding upon all collectively, or upon some separately. He concludes his opinion by observing, that the usage and practice of the navy, as stated by the court martial, will be material to be ascertained, if their lordships resort to the judges; as that may supersede any consideration of what passes in their own courts.

The Solicitor General (now the Lord Chancellor Eldon) expressed his doubts nearly to the same effect as the attorney general*; and concluded with referring to the opinion of his majesty's judges, because it appeared to him, that in a case affecting the life of the subject, it is usual to give the subject the protection which he can find only in their wisdom; and because in such a case it must be most satisfactory to the public, and to those who are to direct, or to suspend the execution of a sentence of death, to look to that wisdom for a solution of any doubts, which can be stated respecting the legality of directing the execution of it.

* See Opinion, Ap. No. XLVIII. sec. 2.

The counsel for the affairs of the admiralty, (Mr. Brodrick) gave a more decided opinion in favour of William Muspratt *. He concludes with observing, that the case appears to him to deserve great consideration, because the evidence of Norman and Byrn was denied to him, though applied for to the court : for, if the prisoners Norman and Byrn appeared to be entirely innocent of the offence imputed to them, it must appear a great hardship to deprive Muspratt of their testimony : and Mr. Brodrick was of opinion, that the court might have pronounced the sentence of acquittal immediately ; and, in as much as Muspratt had lost the advantage which he could in that case have reaped from their testimony, it might be proper for the lords commissioners of the admiralty to interpose in his behalf in obtaining the royal mercy.

The twelve judges were also consulted on the above important case, and in consequence of their opinions, William Muspratt obtained his majesty's pardon. Four of the other prisoners, who had been convicted with him, and sentenced to suffer death, were executed on board of one of his majesty's ships in Portsmouth harbour †.

The

* See Appendix, No. XLVII. sec. 3.

† Morrison, who had likewise been sentenced to suffer death, having been recommended to mercy by the court, was pardoned, and afterwards received on board the Victory, the ship bearing the flag

The court, having gone through the examination of all the witnesses in support of the charge, and allowed the prisoner to cross-question them severally, he is then put on his defence; which, if already prepared, he is allowed to read to the court, or he may dictate it to the judge advocate, in order to its insertion in the minutes. But should the trial be of importance, and a variety of circumstances have been brought forward, upon which the prisoner was unprepared, he may, upon soliciting the court, be indulged with an adjournment until a subsequent day, for the purpose of the better preparing himself for his defence, and the examination of his witnesses in support of what he may have occasion to affirm.

The prisoner may submit his defence to the court, either verbally or in writing; and a prosecutor has no right to reply. Vice-admiral Palliser claimed this right, at the trial of Admiral Keppel, but the same was objected to by the admiral. The court cleared to deliberate upon the question, and was of opinion, that the same was unprecedented, and could not be complied with*.

flag of Admiral Lord Hood (who presided at the said court martial), where he served some time as quarter-master and gunner's mate; and, from his exemplary good conduct on board that ship in the Mediterranean, Lord Hood promoted him to be gunner of the Lutine frigate.

* See Admiral Keppel's Trial. See also the trial of Major John Gordon, of the late 8th West India Regiment.

The prisoner having made his defence, the witnesses in support thereof are to be separately called into court, sworn, and examined, the prisoner first of all asking them such questions as he may deem proper or material; whether to invalidate the prosecutor's evidence, or to establish his general character and good behaviour. And he is allowed to produce written documents, either in his exculpation, or as to character and good behaviour.

The examination of the prisoner's witnesses is conducted in a similar manner to that of the evidence for the prosecution. When the prisoner's interrogatories are ended, the members of the court, or judge advocate, may put such questions as appear to them proper for bringing out the truth; the prosecutor is generally allowed to cross-examine the witnesses upon the points brought forward by the prisoner, but he is by no means to introduce new or extraneous matter; and, after that, the prisoner may again put any additional interrogatories to his witnesses: and the prisoner having closed his evidence, and having nothing further to offer in his defence, the court is cleared, that the members may proceed to deliberate upon the judgment to be pronounced*.

It is the practice, at military courts martial, in the course of proceedings, to differ in some degree from

* Vide Minutes of Proceedings, No. XXXI. sect. 1 and 2.
the

the naval. 1. The prosecutor addresses the court in explanation of the charges, and detailing what he intends to prove. 2. His witnesses are adduced, who are sworn, examined by the prosecutor or court, and afterwards cross-examined. 3. The prisoner makes his defence, in which he answers the prosecutor's address, and comments on his evidence, and enters into a detail of the exculpatory evidence he means to bring forward. 4. The exculpatory evidence. 5. As this evidence may come out stronger or weaker than the prisoner expected, he is allowed to address the court a second time, when the defence is closed. And 6. The prosecutor is allowed to reply; and sometimes, by special permission of the court, he may be allowed to explain by evidence some collateral circumstances omitted, as was done in the late trial of Major John Gordon. The reader will perceive, that those forms are analogous to the proceedings in trials for high treason, and we see no valid objections to similar forms being observed at naval courts martial.

Before we conclude this chapter, it may not be improper to observe that, since the Revolution in 1688, our criminal laws have undergone some wise and humane regulations, by allowing the party accused every possible means of defence, in examining publicly upon oath such witnesses as he may produce, in exculpation or in palliation of the charges exhibited against him.

It

It was an ancient and commonly received practice *, derived from the civil law, and which is still adopted in the kingdom of France, as well as in most of the other states of Europe, that counsel not being allowed to any prisoner accused of a capital crime, so neither should he be suffered to exculpate himself by the testimony of any witnesses †.

In France the practice in criminal cases, prior to the Revolution, was not to admit the prisoner to exculpate himself by the testimony of any witnesses. The examination of the witnesses produced against him was secret. The prisoner was not even admitted to see them till their evidence was closed, and then only that they might identify his person. And some French writers maintain, that this, with the addition of two other laws in the administration of criminal justice, viz. *perjury* being made capital, and that of the *question*, or *torture* being allowed to extort confession from the criminal, are equivalent to the laws of England, as now practised for the investigation of facts, or the bare discovery of truth. Laying aside, however, the discussion of this point, it can never be admitted that those laws are more conformable to reason and humanity, when compared with those of England under similar circumstances. Baron Montesquieu, on taking a cursory,

* State Trials, vol i. Black Com. vol iv. p. 359.

† Black. Com. vol. iv. p. 359.

but comparative, view of them, leaves us to draw our own conclusions in the following words: “ *Ainsi pour juger lesquelles de ces loix sont les plus conformes à la raison, il ne faut pas comparer chacune de ces loix à chacune; il faut les prendre toutes ensemble, et les comparer toutes ensemble* *.”

The proceedings in criminal cases at the present day in France still continue founded on the civil law, and are carried on by depositions, *pro et con*. There is an appeal from the inferior to the grand tribunal—then to the first consul, now emperor—; and the *question* is abrogated.

From the reign of Queen Elizabeth, a practice was gradually introduced of examining witnesses for the prisoner, but *not upon oath*. Sir Edward Coke † protests very strongly against this tyrannical practice, declaring that he never read, in any act of parliament, book, case, or record, that in criminal cases the party accused should not have witnesses sworn for him ‡. And the House of Commons were so sensible of this absurdity, that in the bill for abolishing hostilities between England and Scot-

* “—— Wherefore to determine which of those laws are most agreeable to reason, we must not consider them singly, but compare the whole together.” *Mont. Spirit of Laws*, book xxix. c. 11.

† 3 Inst. 79.

‡ 2 Hale's P. C. 283, and his Summary, 264.

land,

land *, when felonies, committed by Englishmen in Scotland, were ordered to be tried in one of the three northern counties, they insisted on a clause, and carried it, against the efforts of both the crown and the House of Lords, and against the practice of the courts in England, and the express law of Scotland †, “ That in all such trials, for the better discovery of the truth, and the better information of the consciences of the jury and justices, there shall be allowed to the party arraigned, the benefit of such credible witnesses to be examined, upon oath, as can be produced for his clearing and justification.”

By the statute 7 Will. III. cap. 3. the same measure of justice was established throughout all the realm, in cases of treason within the act. And by a subsequent statute ‡, in the reign of Queen Anne, it was declared that, in all cases of treason and felony, all witnesses *for* the prisoner should be examined upon oath, in like manner as the witnesses *against* him.

In case any person called upon, and subject to the jurisdiction of a naval court martial, shall refuse to give his evidence, or prevaricate in the course of

* Stat. 4 Jac. I. c. 1.

† Com. Journ. 4, 5, 12, 13, 15, 29, 30, Jan. 1607.

‡ 1 Ann. stat. 2. c. 9.

his examination, the court is authorized to punish such person by three months imprisonment; or should any person behave with contempt, he may be imprisoned for one month*.

Although the Mutiny Act does not authorize military courts martial to inflict a summary punishment for perjury, yet there is no doubt that offenders, subject to military authority, may be proceeded against by indictment, or punished by the sentence of a general court martial to be assembled for that purpose.

But all persons, who shall commit any wilful perjury, in any evidence or examination at a court martial, or who shall corruptly procure or suborn any person to commit such wilful perjury, may be prosecuted in his majesty's court of *King's Bench*, by information or indictment, setting forth only the offence charged upon such person, without mentioning the commission for holding the court martial,

* Stat. 22 Geo. II. cap. 33. sect. 17. Appendix, No. II.

The punishment inflicted by a court martial on seamen for prevarication, is inserted in the minutes, and usually subjoined to the sentence in the following terms:—"And it appearing to the court that ——— and ———, two seamen belonging to his majesty's ship ———, who were produced as witnesses, and sworn and examined on the said trial, did, in the course of their several examinations prevaricate in their evidence. The court doth order them severally, the said A. and B. to be imprisoned in the Marshalsea, for the term of three months."

OR

or the particular matter tried, or to be tried before such court *.

The crime of wilful and corrupt *perjury* is so odious, and the penalties and punishments annexed to the conviction thereof are so severe, that members of a court martial, from lenity, frequently find it necessary, when they perceive a witness shewing an inclination to prevaricate, to remind him of the nature and obligation of the sacred oath he has taken, and of his solemn appeal to that Supreme Being he worships—to admonish him of the precipice upon the brink of which he totters—of the penalties to be inflicted, and of the perpetual infamy, incurred in the event of his committing wilful and corrupt perjury.

This crime is defined by Sir Edward Coke †, to be committed when a *lawful* oath is administered, in some *judicial* proceeding, to a person who swears *wilfully, absolutely, and falsely*, in a matter *material* to the issue or point in question: for if it only be in some trifling collateral circumstance, to which no regard is paid, it is no more penal than in voluntary extra-judicial oaths, which the law takes no notice of, as being esteemed unnecessary, & *non coram judice*, and therefore will not punish the breach of them ‡.

* Stat. 22 Geo. II. cap. 33. s. 17. Appendix, No. II.

† 3 Inst. 16..

‡ Black. Com vol. iv. p. 137.

The punishment of perjury and subornation at common law has been various. It was anciently death; afterwards banishment, and cutting out the tongue; then forfeiture of goods; and now it is fine and imprisonment, and never more to be capable of bearing testimony *. But the statute 5 Eliz. cap. 9. (if the offender be prosecuted thereon) inflicts the penalty of perpetual infamy, and a fine of 40*l.* on the suborner; and, in default of payment, imprisonment for six months, and to stand with both ears nailed to the pillory. By the same statute, perjury itself is punished with six months imprisonment, perpetual infamy, and a fine of 20*l.*, or to have both ears nailed to the pillory. But the prosecution is usually carried on for the offence at common law, especially as to the penalties before inflicted; the stat. 2 Geo. II. cap. 25. superadds a power for the court to order the offender to be sent to the house of correction, for a term not exceeding seven years; or to be transported for the same period; and makes it felony, without benefit of clergy, to return or escape within the time †.

It has sometimes been wished that perjury, at least upon capital accusations, whereby another's life has been, or might have been destroyed, was also rendered capital, upon a principle of retaliation; as it was, prior to the Revolution, in all cases by the

* 3 Inst. 163.

† Black. Com. vol. iv. p. 138.

laws of France. Baron Montesquieu * assigns justifiable reasons for the French laws, as admitting witnesses to be heard only on the side of the prosecution, and the use of the rack to extort a confession from the accused. In such a constitution, therefore, it was necessary to throw the dread of capital punishment into the other scale, in order to keep in awe the witnesses for the prosecution, on whom alone the prisoner's fate depended. But by the ancient laws of France, when witnesses were admitted on both sides, perjury was punished with fine and imprisonment only †. This is unquestionably a punishment more congenial with our mode of trial, where the fact is openly discussed between witnesses on *both* sides, and the evidence for the crown may be contradicted and disproved, by those produced in defence of the party accused. Where, indeed, the death of an innocent person has actually been the consequence of such wilful perjury, it falls within the guilt of deliberate murder, and deserves an equal punishment, which our ancient law, in fact, inflicted ‡. It seems, indeed, consonant to natural reason, and has therefore been adopted as a maxim by several theoretical writers §, that the

* Montesq. L'Esprit des Loix, liv. xxix. c. 11.

† Par l'ancienne jurisprudence Française les témoins étoient ouïs des deux parts, et la peine contre les faux témoins en justice étoit pecuniaire.—*Les Etablissements de St. Louis*, liv. 1. c. 7.

‡ Britton, c. v.—Black. Com. vol. iv. p. 139.

§ Beccaria, c. 15.

punishment

punishment due to the crime, of which one falsely accuses another, should be inflicted on the perjured informer*.

By Statute 37 Ed. III. cap. 18. we find it enacted, that such as preferred any suggestions to the king's great council, should put in sureties of *talion*; that is, to incur the same pain the other should have had, in case the suggestions were found untrue. But after one year's trial of this law, it was rejected, and imprisonment adopted in its stead†.

Demosthenes tells us that, during two centuries, no alteration was made in the laws of the Locrians. According to one of those laws, he who struck out the eye of another was to lose one of his own. A Locrian having threatened to strike out the eye of a person who had but one, the latter represented, that his enemy, though he should undergo the punishment of *retaliation* inflicted by the law, would by no means suffer equally with himself. It was therefore resolved that, in such a case, the offender should lose both his eyes‡.

* By the laws of Egypt perjury in general was capital, for it was said to involve in itself the two greatest crimes, viz. impiety to the gods, and violation of faith to man.—*Diodorus Siculus*, lib. i. cap. 6. At Rome it was also deemed a capital crime, but properly confined to those "*qui falsum testimonium dolo dixerint, quo quis publico judicio rei capitalis damnaretur.*"

† Stat 38 Ed. III. cap. 9.—*Black. Com.* b. iv. p. 14.

‡ Demosth. in *Timocr.* p. 759.

It must be revolting to every feeling mind to remark, during the last few years, the frequent instances of trials at naval and military courts martial, held on officers of the most meritorious and unimpeachable characters, and some, indeed, founded on charges, derived from communications made by some anonymous writer, or despicable informer. The compensation is poor indeed to the tortured feelings of an innocent officer, to be thus dragged before a tribunal of justice, and, after much anxiety, to have the charges pronounced unfounded, frivolous, and vexatious.

An elegant writer on penal law * has justly observed, that “private informers are the proper instruments only of despotic governments: every idea of liberty and security is lost when the ends of justice are suffered to be sought by such means. It is the part of wise and moderate legislators anxiously to preclude every possible avenue to false accusation and calumny.”

Lieutenant-general Innes, of the Royal Marines, after having served forty-seven years as an officer, with distinction and without stain (as observed in his defence), either in a military or moral point of view, was brought to trial by the Lords Commissioners of the Admiralty, on charges exhibited by

* Eden's (now Lord Auckland) Principles of Penal Law, p. 322. 3d. edit.

an infamous informer. It appears in the trial that George Jewson, the accuser, was some time serjeant of marines under General Innes's command at Chatham, and employed by the deputy-paymaster as clerk in the squad office, until the month of September 1800, when he deserted, taking with him 800l. of the public money. He was, however, overtaken at Liverpool, on the point of embarking for America, was tried at a general court martial at Chatham, and sentenced to receive eight hundred lashes, to be drummed out of the barracks and through the towns with a halter round his neck.

Upon information and affidavits drawn from *so corrupt a source*, we find a general officer, commandant of a division of marines, and of pure and unfulfilled character, arraigned for having *knowingly signed false lists, certificates, or returns*; and 2dly, for having discharged Serjeant Pinn, of the marines, a meritorious character, without authority from the *Lords Commissioners of the Admiralty*. General Innes rested his defence upon the evidence of *the Earl St. Vincent, the first Lord of the Admiralty*, and on that of *Sir Evan Nepean, the Secretary*, and *Charles Bicknell, Esq.* the solicitor for the affairs of the Admiralty. The court, composed of ten general officers of the army, and three general officers of the marines, were of opinion, that Lieutenant-general Innes *was not guilty of having knowingly made any false certificates, lists, or returns*, as stated

in the said charge; and he was *most fully and honourably acquitted of the same*. And the court were further of opinion, that the said charges *were frivolous and vexatious*. With respect to the second charge against Lieutenant-general Innes, of having dismissed and discharged Serjeant William Pinn from the service, the court was of opinion that *the long services of Serjeant Pinn, and the peculiar circumstances of the times, justified Lieutenant-general Innes in a deviation from the second article of the twelfth section of the rules and articles for the better government of his Majesty's marine forces while on shore; and the court did therefore honourably acquit Lieutenant-general Innes of the said charge* *.

It is necessary to remark, that three of the members of the court martial, namely, Generals Johnston, Bowater, and Averne, of the Royal Marines, and commandants of divisions of that corps, were, in a short time after the trial, deprived of their commands, and obliged to retire on full pay; which was also the subsequent fate of General Innes, who had been so unjustly accused, and most honourably acquitted.

Although we cannot implicitly subscribe to the sentiment of a humane writer on criminal law, who

* See minutes of proceedings, also the defence and sentence of Lieutenant-general Innes's court martial, Appendix, No. LXIII. These minutes are principally inserted as formulæ for the proceedings of general courts martial.

says,

says, that "the false accuser ought to suffer the same punishment to which the person accused would have been exposed in case of conviction * ;" because, were a theory of such extensive latitude to be reduced to practice, it would prove highly detrimental in bringing the guilty to condign punishment. Yet it is to be regretted, that our naval, as well as military codes of laws, do not afford sufficient redress to the innocent party, suffering under false accusations.

* "Ogni governo, e repubblicano e monarchico, deve al calunniatore dare la pena che toccherebbe al accusato." *Beccaria*, § 16.

CHAP. IV.

*Of judging of the Guilt of Crimes in general, and of
Principals and Accessories.*

AFTER the examination of all the witnesses produced in support of the charge, as well as of those in favour of the party accused, the court being cleared, the members are now to proceed with deliberation to the most arduous and painful part of their functions, *viz.* finding the prisoner guilty, or *not guilty*, of the crime with which he stands accused; or, in other words, finding the charge exhibited against him *proved*, or *not proved*: and if found guilty, pronouncing that judgment on him which the articles of war, or laws of the land, have annexed to the crime or offence.

For this purpose it is necessary, whilst the court is closed, for the members to consider maturely, not only the facts alledged on both sides, to weigh the credibility of witnesses, the competency of whose evidence had been admitted, and the force and efficacy of their testimonies; but also to consider the several degrees of guilt, connected with the facts, either as principals or accessories, under the various circumstances exhibited to them, in the course of investigation.

It

It would be arrogance to presume any member of a court martial was unacquainted with the extent and powers of inflicting punishments, conformable to the naval and military articles of war, and the rules and regulations for the government and discipline of the sea and land forces; yet some perplexity may at times arise, in marking the nice discriminations of guilt requisite, more particularly in those cases where the articles of war have left the punishments discretionary to the court: and therefore, in this stage of the trial, a competent knowledge of the criminal branch of jurisprudence of the state (or what is denominated the doctrine of *pleas of the crown*), which teaches the nature, extent, and degrees of every crime, and the specific punishments annexed, is essentially important to every individual member who sits to pronounce judgment on any of his Majesty's subjects. For, as Sir Michael Foster observes*, "no rank or elevation in life, no uprightness of heart, no prudence or circumspection of conduct, should tempt a man to conclude that he may not, at some time or other, be deeply interested in these researches.

"The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events, which the compass of a day may bring forth, will teach us (upon a mo-

* Sir Mich. Foster's Preface to Reports.

ment's reflection), that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern."

All the several pleas and excuses which protect the transgressor of a forbidden law, from the punishment which is otherwise annexed thereto, may be reduced to this single consideration—the want or defect of *will*. An involuntary act, as it has no claim to merit, so neither can it be an induction of any guilt: the concurrence of the will, when it has its choice, either to do or avoid the fact in question, being the only thing that renders human actions either praise-worthy or culpable. Indeed, to make a complete crime cognizable by human laws, there must be both a *will*, and an *act*: so that to constitute a crime against human laws, there must be, first, a vicious will; and, secondly, an unlawful act, consequent upon such vicious will.

There is a general rule in law, that no person shall be excused from punishment for disobedience of the laws of his country, excepting such as are expressly defined, and exempted by the laws themselves, and such as labour under a defect of the understanding; for infants, under the age of discretion, cannot be punished by any criminal prosecution whatever. The law, in some cases, exempts an infant under the age of twenty-one, as to com-
mon

mon misdemeanors, so as to escape fine and imprisonment, and the like; and particularly in cases of omission, as not repairing a bridge, or a highway, and other similar offences *: but, for notorious breaches of the peace, a riot, battery, or the like, for these an infant, above the age of fourteen, is equally liable to suffer, as a person of the full age of twenty-one †.

With regard to capital crimes, the law is still more minute and circumspect, distinguishing, with greater nicety, the usual degrees of age and discretion. The capacity of doing ill, or contracting guilt, the law does not so much measure by years and days, as by the strength of the delinquent's understanding and judgment. Thus: a boy of ten, and another of nine years old, who had murdered their companion, have been sentenced to death, and he of ten years actually hanged; because it appeared upon their trials that the one hid himself, and the other hid the body he had killed; which hiding manifested a consciousness of guilt, and a discretion to discern between good and evil ‡.

Thus also, in very modern times, a boy of ten years old was convicted, on his own confession, of

* 1 Hale, P. C. 20, 21.

† 4 Black. Com. c. 2. ed. 1791.

‡ 1 Hale's Pleas of the Crown, c. 26, 27.

murdering

murdering his bed-fellow, there appearing in his whole behaviour plain symptoms of a mischievous discretion : and as the sparing this boy, merely on account of his tender years, might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity ; it was unanimously agreed, by all the judges, that he was a proper object of capital punishment *. But, in all such cases, the evidence of that malice, which is to supply age, ought to be strong and clear, beyond all doubt and contradiction †.

Ideots and lunatics, who are not chargeable for their own acts, for crimes committed when the understanding is deranged or vitiated, are likewise exempted from punishment ‡. Our law is extremely delicate in this respect ; for if a man, in a sound memory, commits a capital offence, and before arraignment or trial he becomes mad, he ought not to be tried, because he is not able to plead to it with that advice and caution that he ought.

If even after a prisoner has been tried for a capital crime, and he becomes *non compos mentis* before judgment, judgment shall not be pronounced ; and if after judgment he becomes of non-sane memory, he shall not be executed : from hence the

* Foster, 72.

† Black. Com. vol. iv. p. 24. ed. 1791.

‡ 3 Inst. 6.

humanity of our English laws is obvious. For, as Sir Edward Coke observes *, “the execution of an offender is for example, *ut poena ad paucos, metus ad omnes perveniat*: but so it is not when a madman is executed; but should be a miserable spectacle both against law, and of extreme inhumanity and cruelty, and can be no example to others.”

But crimes committed through artificial or voluntary madness, occasioned by *drunkenness* or intoxication, our law looks upon rather as an aggravation, than any palliation of criminal behaviour †.

According to the President Montesquieu ‡, drunkenness depends much upon the temperature of the latitude in which we live. It prevails in proportion to the cold and humidity of the climate: he adds that, in going from the equator, towards either pole, we shall find drunkenness prevail in proportion to the increase of latitude. In warm or tropical climates it ought to be more severely punished, where it makes men more mischievous and mad, than in northern climates, where it is founded upon constitutional necessity, and renders men stupid, but not furious.

Our laws, in considering the crimes originating through drunkenness, partake more of the severity

* 3 Inst. 6.

† Black. Com. vol. iv. p. 25. ed, 1791.

‡ Montesq. De l'Esprit des Loix, liv. xiv. c. 10.

of a law enacted in Greece, by Pittacus, than of the lenity of the Roman law. By the former, he who committed a crime when drunk, should receive a double punishment, one for the crime itself, and the other for the ebriety, which prompted him to commit it *; but by the Roman law, great allowances were made for this vice, though the climate was nearly the same, “*per vinum delapsis*” “*capitalis poena remittitur* †.”

Another deficiency of will is, where a man commits an unlawful act, by *misfortune* or *chance*, and not by design. Of this, when it affects the life of another, we had occasion to speak in a preceding chapter of this work ‡; and here it is only necessary to add that, if any accidental mischief happen to follow from the performance of a *lawful* act, the party stands excused from all guilt; but if a man be doing any thing *unlawful*, and a consequence ensue, which he did not foresee or intend, as the death of a man or the like, his want of foresight shall be no excuse; for being guilty of one offence in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequences may follow the first misbehaviour §.

* Montesq. De l'Esprit des Loix, liv. xiv. cap. 10. and Puffendorf's Law of Nature, b. viii. c. 3.

† Black. Com. vol. iv. p. 26. ed. 1791.

‡ Vol. I. chap. ii.

§ 1 Hale's Pleas of the Crown, 9.

Ignorance or mistakes, in point of law, which every person of discretion not only may, but is bound and presumed to know, is, in criminal cases, no sort of defence. Neither can it be admitted at a court martial as a palliation of the prisoner's offence, that he has pleaded ignorance of the articles of war, and rules of discipline to be observed in the navy; as they are compressed in so small a compass, and not only read over to the ship's company every month, but are usually hung up in some public part of the ship, that none may pretend ignorance of them: in the army there is a similar degree of publication.

The maxim *ignorantia juris neminem excusat* is just, so far as that ignorance of general principles, ought never to be admitted as a plea in favour of the accused; but in some particular cases it bears extremely hard on the person tried for an offence.

In discriminating the degrees of guilt of a crime, with which a prisoner stands charged, it frequently happens at courts martial that, on summing up the evidence on both sides, he may appear not guilty of the identical crime laid to his charge, but guilty of an offence of less magnitude, though of the same species or nature, and as such nearly connected with it. In this case it is customary for the court to acquit him of the greater, and find him guilty of the offence of the inferior

rior magnitude, and to inflict a corresponding punishment.

An instance in point recently happened, of a seaman tried for desertion, where the act or deed charged was clearly proved; but, on considering the mitigating circumstances that appeared to attend the case, from which his real intentions were judged, the court acquitted him of *desertion*, but found him guilty of *absenting* himself without leave; and sentenced him to be punished with one dozen of lashes on board of the ship to which he belonged.

We have similar instances at military courts martial, and the case of Major John Browne of the 67th regiment will suffice to illustrate this subject. In October 1787, the major was tried on a complaint, exhibited against him by the members of a court martial at Antigua, of disrespect to them, and on a charge of *cruelty* to Thomas Edwards, a private foldier. With respect to this last charge he was found guilty, not of *cruelty* but of *oppression*, and was sentenced to be suspended from pay and duty 309 days, the time during which he had confined the said foldier, without trial; and he was also sentenced to pay the foldier forty pounds*.

* We have given this as a novel sentence, and we have our doubts whether the court did not exceed its authority by imposing a fine of 40l. The injured party was undoubtedly entitled to a compensation for his tedious confinement, but we rather think he should have sought it at common law.

This

This is founded upon similar principles as the verdict of a jury, upon an indictment of murder, where they acquit the prisoner of *murder*, but find him guilty of *manslaughter*.

Though there may appear strong suspicions of a prisoner's guilt of some other crime or offence, not set forth in the charge, yet, in acquitting him of the one he is tried for, the court cannot legally find him guilty of any other *distinct* offence. Neither can a prisoner be found guilty for what may be termed an *ex post facto* offence or misdemeanor; that is, an offence committed after he had been confined, or even indulged as a prisoner at large *: but in all such cases he may be ordered into confinement, and brought to a new trial, for the distinct crime or offence appearing against him.

In this place it may be proper to remark, that if a prisoner be tried for a crime, said to have been committed on a particular day of the month, and that in the course of trial, it is proved to

* In the sentence of a court martial on Mr. Crawford, a midshipman belonging to the *Emerald*, for contempt to Captain *Knell*, her commander, and disobedience of orders, &c. the court, inadvertently, found him only guilty of *having been disorderly when a prisoner at large*, and reprimanded him accordingly. See Sentence, App. No. XXXIV. sect. 6.

Mr. Crawford brought an action against his captain—the learned judge made some animadversions on the sentence, and awarded heavy damages.

have

have happened on a day different to what the indictment or accusation sets forth, it is incumbent on the court martial to acquit him; and he is not liable to be tried a second time for the same offence. We have an instance illustrative of this doctrine (2d January 1759) in the trial of Richard Bird, seaman, belonging to the Norwich, who was accused of having attempted to desert, by swimming on shore, the 14th November 1758; but, as it was proved to have been attempted on the 15th November, he was acquitted*.

In judging of the gradation of guilt, among persons that are capable of committing crimes, and to whom the punishments of the law can extend, it will first be proper to offer a few remarks respecting principals and accessories; and, although it may not be necessary to enter into prolix descriptions on the elaborate distinctions made between them, it may be deemed of some importance for members of courts martial to have the essential points of law, regarding such offenders, explained and illustrated, with cases applicable to the subject.

Accessories at the fact, as they were anciently called, are now considered as principals in the *second degree*, namely, all that are present, aiding and assisting, are equally principals with him that

* See Chronological List of Trials by Naval Courts Martial.

gave the stroke whereof the party died ; for though one gave the stroke, yet, in the interpretation of the law, it is the stroke of every person that was present aiding and assisting, and though they are called principals in the *second degree*, yet they are principals *. Foster says, that in order to render a person an accomplice and principal in a felony, he must be aiding and abetting, or ready to afford assistance, if necessary.

Sir William Blackstone has clearly defined the distinctions between principals and accessories †. “ A man may be a *principal* in an offence in two degrees : a principal in the first degree is he that is the actor or absolute perpetrator of the crime : and in the second degree, he who is present, aiding and abetting the fact to be done, which *presence* need not be an actual immediate standing by, within sight or hearing of the fact ; but there may be also a constructive presence, as when one commits a robbery or murder, and another keeps watch, or guards at some convenient distance ‡. An *accessory* is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed.”

* 1 Hale, P. C. 437. Gyltin's case, Plowd. 97. 100.

† Black. Com. b. 4. cap. 3.

‡ Foster, 359.

An accessory *before* the fact, Sir Mathew Hale * defines to be one who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime. Herein absence is necessary to make him an accessory ; for, if such procurer or the like be present, he is guilty of the crime as principal. If A. then advises B. to kill another, and B. does it in the absence of A. now B. is principal, and A. is accessory in the murder. And it is also settled, that whoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact. It is likewise a rule that he, who in any ways commands or counsels another to commit an unlawful act, is accessory to all that ensues upon that unlawful act ; but is not accessory to any act distinct from the other.

An accessory *after* the fact may be where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon †. Therefore to make an accessory *ex post facto*, it is in the first place requisite that he knows of the felony committed ‡. In the next place he must receive, relieve, comfort or assist him. And generally any assistance whatever given to a felon, to

* 1 Hale, P. C. 615, 616.

† Ibid. P. C. 618.

‡ 2 Hawk. P. C. 319.

hinder his being apprehended, tried, or suffering punishment, makes the assistor an accessory; as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force or violence to rescue or protect him *. So likewise to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape, makes a man an accessory to the felony. By the statutes, 5 Ann. cap. 31, and 4 Geo. I. cap. 11. all receivers of stolen goods, knowing them to be stolen, are made accessories (where the principal felony admits of accessories) and may be transported for fourteen years †. The felony must be complete, at the time of the assistance given; else it makes not the assistant an accessory: and, so strict is the law where a felony is actually complete, in order to do effectual justice, that the nearest relations are not suffered to aid or receive one another. If the parent assists his child, or the child his parent, if the brother receives the brother, the master his servant, or the servant his master, or if even the husband relieves his wife, who have any of them committed a felony, the receivers become accessories *ex post facto*.

Some offences admit of accessories, others do not. In high treason there are no accessories, but all are principals; the same acts that make a man

* Ibid. 317, 318.

† Foster, 73.

accessory in felony, make him a principal in high treason, upon account of the heinousness of the crime*. In petit treason, murder, and felonies, with or without benefit of clergy, there may be accessories: except only in those offences which, by judgment of the law, are sudden and unpremeditated, as manslaughter and the like; which, therefore, cannot have any accessories *before* the fact†. So too in petit larceny, and in all crimes under the degree of felony, there are no accessories, either *before* or *after* the fact, but all persons concerned therein, if guilty at all, are principals. In treason all are principals, *propter odium delicti*; in trespass all are principals, because the law, *quæ de minimis non curat*, does not descend to distinguish the different shades of guilt in petty misdemeanors. It is a maxim, that *accessorius sequitur naturam sui principalis*‡; and therefore an accessory cannot be guilty of a higher crime than his principal; being only punished as a partaker of his guilt. So that if a servant instigate a stranger to kill his master, this being murder in the stranger as principal, of course the servant is accessory only to the crime of murder; though, had he been present and assisting, he would have been guilty as principal of petty treason, and the stranger of murder||.

* 3 Inst. 138. 1 Hale, P. C. 613.

† 1 Hale, P. C. 615.

‡ 3 Inst. 139.

|| 2 Hawk. P. C. 315.

The established principles of law, respecting absent persons being accessories to offences which they have in any manner influenced, are, 1st, Any man advising, influencing, or countenancing another, be it by words, rewards, or example, to do mischief, is an accessory at a distance. 2d, Though mischief is committed by different means, than those proposed between the instigator and perpetrator, for instance, A. persuades B. to poison C. if he kills him by any other means, A. is accessory. 3d, When the principal goes beyond the term of solicitation, if in the event the mischief committed was a probable consequence of what was ordered or advised, the person giving such orders or advice will be accessory.

It is also an established principle of law, that when several persons agree and meet to commit an illegal act, which is perpetrated by one only, all who are present and abetting him, or ready to aid him, are principals in the *second degree*, as well as the principal in the first degree*.

Thus we perceive the wisdom of the legislature, in framing the articles of war for the navy, has specially provided for, and guarded against the principals and accessories in the crime of mutiny; 1st, by article 19, it is declared that "if any person, in or belonging to the fleet, shall make or endea-

* Ibid. cap. 46.

vour to make any mutinous assembly upon any pretence whatsoever, every person offending herein, and being convicted thereof by the sentence of the court martial, shall suffer death; and if any person, in or belonging to the fleet, shall utter any words of sedition or mutiny, he shall suffer death, or such other punishment as a court martial shall deem him to deserve." And 2d, as to accessories to the crime of mutiny, it is enacted by article 20, that, "if any person in the fleet shall conceal any traitorous or mutinous practice or design, being convicted thereof by the sentence of a court martial, he shall suffer death, or such other punishment as a court martial shall think fit; and if any person, in or belonging to the fleet, shall conceal any traitorous or mutinous words, spoken by any to the prejudice of his majesty or government, or any words, practice, or design, tending to the hindrance of the service, and shall not forthwith reveal the same to the commanding officer, or, being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, he shall be punished as a court martial shall think he deserves."

We have, in a preceding part of this work *, noticed, that by statute 22 Geo. II. cap. 33. sec. 19. sentences of death by courts martial, in cases of

* Vol. I. chap. iii.

mutiny, may be put in execution within the narrow seas, or on foreign stations, without reporting the proceedings of the court martial either to the lords commissioners of the admiralty (if within the narrow seas), or to the commander in chief, for the time being (if abroad), where such sentence was passed. But will it not appear to posterity in a most extraordinary light that, at some recent trials at Spithead and in Portsmouth harbour, for mutiny of the most outrageous nature, and dangerous tendency, the members of the court martial, previous to their assembling for trying the offenders, should doubt of the powers vested in them by the forefaid statute? and that, before they proceeded to trial, a letter was absolutely written to the lords of the admiralty to know their pleasure, whether the court might, on conviction, put a sentence of death into immediate execution, without reporting the proceedings to the board. Their lordships directed, that the proceedings of the court martial should be reported as in other cases, and that their directions would be afterwards transmitted, for carrying into execution the sentences on those offenders who might be adjudged to suffer death. This was naturally to be expected, where a question of power was at issue; and which power, vested by supreme authority in the members of a court martial, was, in a manner, virtually relinquished, by writing to the lords of the admiralty the letter alluded to. If members of a court martial, with a specific power

delegated to them by the legislature, will allow the authority conferred upon them to be thus frittered away, all the acts of parliament, rules, and regulations, for the government and discipline of his majesty's ships, may, on a similar exercise of power by the lords commissioners of the admiralty, be subverted, rendered null, and of no effect whatever.

We have only further to remark on this topic, that the alarming danger, and awful consequences resulting from mutiny, as tending to subvert the laws and discipline of the navy, have been maturely weighed and considered by the legislature, in framing the 19th section of the statute before recited. and which rendered it expedient to give to a court martial the power of inflicting prompt and immediate punishment, in such cases, without waiting for directions from the admiralty, if at home, or from the commander in chief, if on a foreign station.

We therefore do not see, on taking the literal import, true meaning, and spirit of the said 19th section of the statute quoted, why, under any circumstances of trials for mutiny, the members of the court should not, in their own discretion, order the immediate execution of the offender or offenders convicted, or with as much promptitude, as they in their wisdom may think proper; without making any sacrifices of their independency, as a
military

military tribunal, to any power whatever, except the legislative one, from whom the court martial derives its authority, and which is paramount to all others.

Sir William Blackstone's opinion is conclusive on a question of this nature, by observing, that "Not only the substantial part, or judicial decision of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament: for, if once those outworks were demolished, there would be an inlet to all manner of *innovation* on the body of the law itself."

It is an admitted maxim in our criminal laws, as well as in those of most other countries, that an immediate punishment for a great crime is extremely just, useful, and exemplary: because, the shorter the interval of time between the punishment and the commission of the crime, the stronger and more lasting will be the association of the two ideas *crime* and *punishment*; so that they may be considered, one as the cause, and the other as the unavoidable and necessary effect. Besides, the more immediate a punishment is inflicted after trial or the commission of a crime of magnitude, the more effectually will it operate, both as an example, and as inspiring terror into others, to prevent them from committing similar crimes, which is the end of all punishment.

By

By the military articles of war, it is declared, that
“ Any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, shall not use his utmost endeavour to suppress the same ; or, coming to the knowledge of any mutiny or intended mutiny, shall not, without delay, give information thereof to his commanding officer, shall suffer *death*, or such other punishment as by a general court martial shall be awarded *.”

By the naval articles of war †, the crime of desertion is punishable, not only in the person of the principal offender, but also the accessories are to be punished with death, or such other punishment as the circumstances of the offence shall deserve, and a court martial shall judge fit. And, by this article, any commanding officer of any of his majesty's ships or vessels of war, is punishable as an accessory, should he receive or entertain a deserter from any other of his majesty's ships or vessels, after discovering him to be such deserter, and shall not, with all convenient speed, give notice to the captain of the ship or vessel to which such deserter belongs ; or, if the said ships or vessels be at any considerable distance from each other, to the secretary of the admiralty, or to the commander in chief : every person so offending, and being convicted thereof

* Mil. Art. sect. 2. art. 4.

† Article 16.

by the sentence of the court martial, shall be cashiered.

By the articles of war, framed for the army, we find accessories to the crime of desertion are punishable nearly in the same manner *. For, by article 1, of the sixth section, it is declared, that every non-commissioned officer or soldier enlisting himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company, in which he last served, shall be reputed a deserter, and suffer accordingly. And by article 2, of the same section, it is declared, that in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served; he, the said officer, so offending, shall, on being convicted thereof before a general court martial, be cashiered. And further, whatsoever officer, non-commissioned officer, or soldier, shall be convicted of having advised or persuaded any other officer or soldier to desert, shall suffer such punishment, as by the sentence of a general court martial shall be awarded †.

We

* Mil. Art. (1804) sect. 6.

† By an act 1 Geo. I. and by the Mutiny Act, 1804, sect. 90 and 91, it is enacted, that any person or persons whatsoever, who shall directly or indirectly persuade or procure, or endeavour to persuade or procure any soldier to desert, shall, on conviction, forfeit the sum of forty pounds, or may be imprisoned for

Although the naval articles of war do not expressly prohibit duelling in the fleet, we have many instances on record, where persons, subject to the jurisdiction of courts martial, have been tried and punished for this offence. For, by article 23, it is declared, that “ If any person in the fleet shall quarrel or fight with any other person in the fleet, or use reproachful or provoking speeches or gestures, tending to make any quarrel or disturbance, he shall, upon being convicted thereof, suffer such punishment as the offence shall deserve, and a court martial shall impose.”

But in the army, where the association of diversified characters is more extensive, and consequently the practice of duelling more frequent than in the navy; the legislature has wisely endeavoured, in framing the laws and regulations for the army, to check or counteract the principle of mistaken sentiments of honour, which, in an eminent degree, pervades the minds of gentlemen thus mingled in society. Hence we perceive that, in the army, by the articles of war, the giving or sending a challenge, is a crime punishable, both in the principals and the accessories: this is consonant to the established principles of the courts of criminal judicature; and all seconds, promoters, and carriers of challenges, in order to duels, are in like manner considered as principals and to be punished accordingly *.

With

for any time not exceeding six months, and also stand in the pillory for one hour.

* The articles of war for the army (1804) section 7, art. 2. ordain

With respect to the law of England on the subject of duelling, and which is supported by the laws of religion and morality, it is clearly laid down (as will be shewn from the high authorities to be hereafter noticed) that, if two persons meet with malice aforethought, and in order to revenge any injury which they conceived they had suffered in a former quarrel, fight a duel, and if the death of either party ensue in consequence of such duel, the other party is guilty of *murder*. If the duel took place immediately after the quarrel, before it could be supposed that the heat of their passion had time to cool, then the taking away the life of one of the parties, amounted only to the crime of *manslaughter*. The malice and the murder consisted in the parties going to fight at such an interval of time after the quarrel, that their passion may be supposed to have subsided. Although an act of this kind was declared by law to be a murder, yet, in point of the moral guilt attached to it, it differed materially from other cases

ordain cashiering as the punishment of a commissioned officer, who shall give or send a challenge, and corporal punishment for a non-commissioned officer or soldier, guilty of the same offence. Art. 3. declares, that "if any commissioned officer or non-commissioned officer, commanding a guard, shall knowingly suffer any person whatsoever to go forth to fight a duel, he shall be deemed a principal, and punished as a challenger: and that all seconds, promoters, and carriers of challenges in order to duels, shall be deemed as principals, and punished accordingly." And by section 7. art. 5. it is declared, "that whatsoever officer, non-commissioned officer or soldier, shall upbraid another for refusing a challenge, shall himself be punished as a challenger."

of

of murder. The prejudices of mankind, the estimation and severity of public opinion, and what the world call the law of honour, still sanction this crime, and sometimes unavoidably lead to the commission of it; and all religious or moral reasoning against the custom of duelling avail little, when opposed to passion, and the fear of being disgraced in society. “By the force of a tyrant custom, which is misnamed a point of honour, the duellist kills his friend whom he loves; and the judge condemns the duellist, while he approves his behaviour. Shame is then the greatest of all evils; what avail laws when death only attends the breach of them, and shame obedience to them *?”

Hale and other writers on the criminal laws of England, have laid it down as an established principle, “that not only he who kills another in a deliberate duel, let the provocation be what it may, but his second also is guilty of *murder*; and it has been doubted, whether this does not extend even to the second of him who was killed, because the death happened upon a compact in which all were engaged.” But though, in a subsequent part, Lord Hale thinks the latter opinion too severe, he says, it is a great misdemeanor, even in him †.

In

* Spectator, No. 84.

† 1 Hale. 441. 443. 453. 4 Black. Com. 199. edit. 1791.
“it seems (says Hawkins) too severe a construction to make a
man,

In illustration of the doctrine laid down by Hale and Blackstone, we have the opinion of the present learned judge advocate general (Sir Charles Morgan) on the proceedings of a general court martial, recently held at the Cape of Good Hope (11th August 1800), on the trial of Ensign Mackay, of the 91st regiment of foot, which took place in consequence of Ensign Monteath having fallen in a duel. On this trial, an error had inadvertently been admitted by the members of the court; who, in the case of an officer arraigned and tried upon a charge of *murder*, neither acquitted nor convicted him thereof, but contented themselves with an ambiguous opinion of his “*having killed his adversary in the duel.*” A circumstance which, if the duel proceeded upon a deliberate challenge, constituted, in the eye of the law, a wilful murder; and required, absolutely and indispensably, that the court should pronounce a capital sentence, however they might see cause for recommending the prisoner to his majesty’s clemency: and if, on the other hand, the prisoner had been hurried into the duel, by a sudden falling out, or upon immediate violent provocation, which did not allow time for cool reflection, he was entitled to an acquittal of the crime of murder.

The uncertainty of the verdict (if it may be so called) rendered it impossible for his majesty to

man, by such reasoning, the murderer of his friend, to whom he was so far from intending any mischief, that he was ready to hazard his own life in the quarrel.” 1 Hawk. p. 82.

rectify

rectify or accept it ; and his majesty had therefore directed, that the court martial should be re-assembled, in order to obtain from them a decisive opinion.

Notice was taken of a circumstance as not being quite correct ; and in truth it did seem remarkable, that Ensign Marshall, and Lieutenant Tait, the supposed seconds, should have been tried before the *principal* ; because if he had been found guilty of murder, it would have followed, that they should have taken their trial as *accessories* to that crime, and not merely to have been charged with contempt of an article of war in being seconds at a duel ; a charge to which they would have been open, if the death of one of the parties had not ensued : nor would their having been previously tried for the military offence have been a bar to their being afterwards tried for the other more serious crime. If Ensign Marshall was a second to Ensign Mackay, *who killed his antagonist*, the judge advocate general rather thought, in the event of Ensign Mackay having been found guilty of murder, that he must have taken his trial as for murder also ; not as an accessory, but as a principal.

We have also a recent instance of the trial of three officers, at the Old Bailey (September 21, 1802), by special commission, as the offence was committed in parts beyond the sea, for the murder of John Breamer

Breamer, another officer; two of the said officers having been seconds in the duel: namely, Messrs. Henry Rea, Joseph Grace Beaumont, and John Morgan, the two former lieutenants of marines, and the latter a lieutenant in the navy, who were charged in the indictment, 1st, That Henry Rea, on the 14th March 1802, in parts beyond the seas, did with a certain pistol, loaded with a leaden bullet, shoot at John Breamer, and wound him in the belly, of which wound the said John Breamer languished until he died; and the two other prisoners were charged with having been present at the time, aiding and assisting the prisoner Rea, in committing the said murder. It appeared in evidence, that the circumstances attending the duel happened at the Cape of Good Hope, on the day stated in the indictment, but there was no evidence as to the original cause of the quarrel, or how the provocation took place. The counsel for the prisoners submitted that, with regard to Mr. Beaumont and Mr. Morgan, the case was not such as should go to a jury; because, in the first place, it was a disputed point of law, whether the second of the deceased was guilty in the same manner as the other second? 2dly, it did not appear by any evidence then produced, on the part of the prosecution, which of the two, Mr. Beaumont, or Mr. Morgan, was second to the deceased?

The learned judge, Baron *Hotham*, in summing up the evidence to the jury, replied to the objections of counsel, and said, the opinions that had been

quoted to shew that the second of the deceased was not a principal in the homicide, were by no means decisive—they were not his opinion. This was, however, a question which could not then be decided; when necessary, it must go before the twelve judges. But with respect to the question then before him, who was the second of Mr. Rea, there could be no doubt from the evidence, that that person was Mr. Beaumont, and therefore it was a fit case to go before the jury. He also stated the law on which the prisoners could not be convicted of manslaughter: they must either be found guilty of murder, or acquitted. But there were many facts not disclosed at all, which would have been very material in this case. It was possible that, at the place where the duel was fought, the parties might have conducted themselves in such a manner as should induce the jury to find a verdict for the prisoners, if that conduct had been made known. It was possible that the prisoner (Rea) might have endeavoured to prevent the duel; and that the fatal catastrophe was occasioned by the obstinate and wrong-headed conduct of the deceased, which might have been such as the other could not endure. The lives of three persons were at stake, and it was for them to say, whether they could thus, in the dark, find the prisoners guilty, when there might be circumstances which had they known they would sooner have cut their hands off, than doomed those persons to that fate which must follow their verdict of guilty. The judge then dwelt with great humanity

manity on the excellent characters given of the prisoners by so many respectable persons, and observed, that if any doubt remained on the minds of the jury, the evidence to character must preponderate. The jury retired for ten minutes and found the three gentlemen *not guilty*.

Equality of combat is highly necessary to extenuate the crime of duelling. Thus, in the case of mutual combat, in order to save the party making the first assault, upon an insufficient legal provocation, from the guilt of murder, the occasion must not only be sudden, but the party assaulted must be put upon an equal footing in point of defence, at least at the onset. This is peculiarly necessary where the attack is made with deadly or dangerous weapons.

For instance, A. uses provoking language or behaviour towards B., who thereupon strikes him, and a combat ensues, wherein A. is killed. This is held *manslaughter*, for it was a sudden affray, and they fought upon equal terms. But if B. had drawn his sword, and made a pass at A. whose sword was then undrawn, and thereupon A. had drawn, and a combat had ensued in which A. had been killed; this would have been *murder*. For B., by making his pass while his adversary's sword was undrawn, shewed that he sought his blood; and A's. endeavouring to defend himself, which he had a right to do, will not excuse B. But if B. had first drawn

and forborne till his adversary had also drawn, it had been no more than *manslaughter* *.

In the case reported by Kelynge †, a person named Mawgridge, upon words of anger, threw a bottle with great force at the head of Mr. Cope, and immediately drew his sword. Mr. Cope returned a bottle at the head of Mawgridge, which it was lawful for him to do in his own defence, and wounded him; whereupon Mawgridge stabbed Cope, which was ruled to be murder. For Mawgridge, in throwing the bottle, shewed an intention to do some great mischief, and his drawing immediately shewed that he intended to follow up his blow.

There are cases, however, where the degrees of extenuation are minutely attended to; and those are upon words of reproach, or indeed any other sudden provocation, when the parties come to blows, and a combat ensues, no undue advantage being taken or sought, on either side; if death ensue, this amounts to manslaughter. And here it matters not what the cause be, whether real or imaginary, or who draws or strikes first, provided the occasion be sudden, and not urged as a cloak for pre-existing malice. For in no case will the killing, though in mutual combat, admit of alleviation, if the fighting were upon malice. Nothing can be more dangerous or unjust, in matters of this high nature, than to

* East's Pleas of the Crown, v. i. p. 242.

† Kel. Rep. 128, 129. Fost. 271. 274.

establish material distinctions upon points, which do not enter into the intrinsic merits of the case *.

In every case of homicide upon provocation, however great it be, if there be sufficient time for *passion to subside*, and for reason to interpose, such homicide will be murder †.

On similar principles, deliberate duelling, if death ensueth, is murder,

But if, upon a sudden quarrel, the parties fight upon the spot, or if they immediately fetch their weapons, and go into the field and fight, and one of them falleth, it will be but manslaughter; because it may be presumed the *blood never cooled*.

In April 1803, Captain James Macnamara of the navy, was tried at the Old Bailey, on a charge, founded on the verdict of the coroner's inquisition, of manslaughter, by a pistol bullet discharged by him at Colonel Montgomery, in a duel at Chalk Farm, on the 6th April, 1803. The circumstances which gave birth to this unfortunate duel, appear in evidence to be briefly these: The parties were, on the afternoon of the 6th of April, between the hours of four and five o'clock, riding in Hyde Park, each followed by a Newfoundland dog. The dogs

* 1 Hale. 453. 456.

† Foster, 296, 297.

began fighting. Colonel Montgomery alighted from his horse in order to separate them; and on Captain Macnamara's coming up, Colonel Montgomery said, "If you do not call off that dog, I'll knock him down." Captain Macnamara answered, "If you knock down the dog, you must knock down me too." Colonel Montgomery said, "This is not the proper place for the adjustment of any dispute; my name is Colonel Montgomery, and you know where to find me." Captain Macnamara answered, "My name is Captain Macnamara, of the royal navy."

The same conversation was again almost repeated, and they mutually exchanged cards with their names and addresses. The consequence was, that, before the passion cooled, Captain Macnamara sent a challenge to Colonel Montgomery, by his second, Captain Barry; and the same afternoon, at seven o'clock, they fought with pistols, when Colonel Montgomery was mortally wounded, of which he died in a few minutes after; and Captain Macnamara also received a dangerous wound, but of which he recovered.

Captain Macnamara's defence, which he read himself to the court, is so eloquent an appeal to the feelings and passions of a jury, that we cannot resist, in this place, giving it to our readers at length. "I appear before you with the consolation that my character has already been delivered, by the verdict
of

of a grand jury, from the shocking imputation of murder; and that, although the evidence against me was laid before them, without any explanation or evidence of the accusations which brought me into my present unhappy situation, they made their own impression, and no charge of criminal homicide was found against me. I was delivered at once from the whole effect of the indictment. I therefore now stand before you upon the inquisition only taken before the coroner, upon the view of the body, under circumstances extremely affecting to the minds of those who were to deliberate on the transaction, and without the opportunity which the benignity of the law affords me at this moment, of repelling that inference of even sudden resentment against the deceased, which is the foundation of this inquest of *manslaughter*.

“ The origin of the difference, as you see it in the evidence, was insignificant—the heat of two persons, each defending an animal under his protection, was natural, and could not have led to any serious consequences. It was not the deceased’s defending his own dog, or his threatening to destroy mine, that led to the fatal catastrophe. It was the defiance alone which most unhappily accompanied what was said; words receive their interpretation from the avowed intention of the speaker. The offence was forced upon me by the declaration, that he invited me to be offended, and challenged me to vindicate the offence by calling

upon him for satisfaction: 'If you are offended at what has passed, you know where to find me.' These words, unfortunately repeated and reiterated, have over and over again been considered by criminal courts of justice as sufficient to support an indictment for a challenge. These judgments of courts are founded upon the universal understandings and feelings of mankind; and common candour must admit, that an officer, however *desirous* to avoid a quarrel, cannot refuse to understand what even the grave judges of the law must interpret as a provocation and a defiance. I declare, therefore, most solemnly, that I went into the field from no resentment against the deceased: nothing, indeed, but insanity, could have led me to expose my own life to such imminent peril, under the impulse of passion from so inadequate a cause as the evidence before you exhibits, when separated from the defiance which was the fatal source of mischief; and I could well have overlooked that too, if the world, in its present state, could have overlooked it also. I went into the field, therefore, with no determination or desire to take the life of my opponent, or to expose my own. I went there in hopes of receiving some soothing satisfaction for what would otherwise have exposed me in the general feelings and opinions of the world. The deceased was a man of popular manners, as I *have heard*, and with very general acquaintance. I, on the other hand, was, in a manner, a stranger in this great town, having been devoted, from my infancy,

to

to the duties of my profession in distant seas. If, under these circumstances, words, which the deceased intended as offensive, and which he repeatedly invited to be resented, had been passed by, and submitted to, they would have passed from mouth to mouth, have been exaggerated at every repetition, and my honour must have been lost.

“ Gentlemen, I am a captain of the British navy. My character you can only hear from others; but to maintain any character in that station, I must be respected. When called upon to lead others into honourable dangers, I must not be supposed to be a man who had sought safety by submitting to what custom has taught others to consider as a disgrace. I am not presuming to urge any thing against the laws of God, or of this land. I know that, in the eye of religion and reason, obedience to the law, though against the general feelings of the world, is the first duty, and ought to be the rule of action; but, in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowances for my situation. It is impossible to define, in terms, the proper feelings of a gentleman; but their existence has supported this happy country for many ages, and she might perish if they were lost. Gentlemen, I will detain you no longer; I will bring before you many honourable persons, who will speak what they know of me in my profession, and in private life, which will the better enable

enable you to judge, whether what I have offered in my defence may safely be received by you as truth. Gentlemen, I submit myself entirely to your judgments. I hope to obtain my liberty through your verdict, and to employ it with honour in defence of the liberties of my country."

Captain Macnamara afterwards called on the following respectable naval officers to give evidence as to his character: viz. Lords Hood, Hotham, Nelson, Sir Hyde Parker, Sir Thomas Troubridge, Captains Martin, Towry, Lydyard, Moore, and Waller; also Lord Minto and General Churchill, who all concurred in bearing testimony of his conduct as an officer and gentleman, and of his being an honourable, good-humoured, pleasant, lively companion, exactly the reverse of a quarrelsome man.

Mr. Justice Heath, after stating the charge which the Jury had to decide, observed, that their province was very much limited. The crime of *manslaughter* was, where one man killed another on sudden heat of passion. Most fortunately for the prisoner they were not now to inquire into the extent of that provocation; for though they had it in evidence that there had been a quarrel, yet it happened a considerable time before the fact which they were trying took place. If the inquest had returned a presentment of murder, instead of manslaughter, it would have then been their painful task

task to inquire, whether there had not been sufficient time for the passion to have cooled; and if there had, then the law, which knows nothing of these nice sentiments of honour, must have pronounced the crime murder. There was a great deal of evidence respecting the provocation given, but it was not necessary to state it, as the extent of it was, under this charge, immaterial. It appeared they quarrelled, and they parted; but they met again at Chalk Farm, after a long time, and at a distant place, and then the deceased fell by the hand of the prisoner: this he admitted by his defence. All the character they had heard, however respectable the persons who gave it, ought not to have any influence on their verdict; they had only to inquire, whether the deceased got his death from the hands of the prisoner; and this was admitted.

The Jury withdrew for about ten minutes, and then returned a verdict of *not guilty*.—This verdict appears to be contrary to the opinion of the learned judge, and its accuracy has been very much questioned, notwithstanding the extenuating circumstances attending the case; for it is a general principle of law, that whenever death ensues from sudden transport of passion, or heat of blood, if even upon a reasonable provocation, and without malice, or if upon sudden combat, it will be *manslaughter* *.

But

* Foster, 296. Mr. Heavyside, the surgeon, was afterwards tried for murder, as an accessory, by his presence having aided to the duel; and acquitted on the principle, that having gone out,

But if the parties fight at such an interval, as that the passion might have subsided; or if from any circumstances attending the case, it may be reasonably concluded, that their judgment had actually controuled the first transport of passion before they engaged, and one falleth, it will be murder*.

It is believed, that there is no instance of an actual execution in England, in consequence of one party killing another in a duel, fought fairly, and on equal terms†. In the case of Major Oneby, who was tried at the Old Bailey, (1726) and found guilty of the murder of Mr. Gower; the main point on which the judgment turned, was evidence of *express malice* after the company had interposed to reconcile the parties, in their sudden quarrel at a gaming table, which occasioned their throwing bottles at each other. After the parties had sat down together again for about an hour, Mr. Gower offered his hand, by way of reconciliation, to Major Oneby, who made answer, *No, damn you, I will have your blood*. The reckoning being paid, all the company, except Oneby, went out of the room to go home, and he

out, not as a *second*, but as a *surgeon*, with a view, if possible, to save life: it would indeed be extraordinary, had he been deemed guilty of murder.

* Foster, 296, 297.

† The case of John Barbot, who was executed at the island of Saint Christopher, A.D. 1753, for killing his antagonist in a duel, was considered severe.—*State Trials*, vol. x. p. 182.

called

called to *Gower* to come back, and immediately the door was shut, and the rest of the company excluded; but they heard a clashing of swords, and the deceased received the mortal wound. It appeared also, that *Major Oneby* had received three wounds in the fight, and that from the time of throwing the bottles there was no reconciliation between him and the deceased. *Major Oneby* would unquestionably have been executed if he had not destroyed himself in prison the night before*.

The best way to prevent duels, according to most writers on criminal law, is to punish the aggressor, and declare innocent the person who was constrained to fight. A law has been recently passed in the Mississippi legislature against duelling, and imposing on the aggressors a fine of 1000 dollars, imprisonment for twelve months, and incapacity from holding any office for five years. If either party fall, the survivor and his associates are to suffer death.

If the principal and accessory be joined in one indictment, and tried together, the accessory may enter into the full defence of the principal, and avail himself of every matter of fact, and every point of law, tending to his acquittal. For the accessory is, in this case, to be considered as *particeps*

* See his case, 2 Stra. p. 66, and 2 Lord Raymond, 1485.

in lite, and this sort of defence necessarily and directly tendeth to his own acquittal *.

Foster lays it down, that the conviction of the principal is evidence against the accessory sufficient to put him on his defence, but it is not conclusive evidence against him; for it is founded on a legal presumption, that every thing in the former proceeding was rightly and properly transacted. But a presumption of this kind must give way to fact, manifestly and clearly proved; as against the accessory, the conviction of the principal will not be conclusive.

And therefore, if it shall come out in evidence upon the trial of the accessory, as it sometimes hath, and frequently may, that the offence of which the principal was convicted did not amount to felony in him, or not to that species of felony with which he was charged, the accessory shall avail himself of this, and ought to be acquitted †.

Foster illustrates this subject by the case of Macdaniel and others, tried at the Old Bailey, December, 1755. Certain youths who were convicted of robbery, being totally ignorant of the conspiracy mentioned in the report of that case, took no advantage of it, and were convicted upon full legal evi-

* Fost. Cr. Law, 365.

† Ibid. 365. 9 Co. 118. Lord Sanquhar's Case.

dence.

dence. But when the whole scene of villainy came to be disclosed upon the trial of those miscreants, they were discharged from that indictment upon this single objection—that the offence of the principals did not, in the eye of the law, amount to robbery*.

The principal, or accessory, can avail himself of the point of *fact*, as well as of the point of law, by shewing, against the evidence of the record, by the testimony of witnesses, that the principal was totally innocent†.

Foster considers, that this rule should be received with great caution, because *facts*, for the most part, depend upon the *credit* of witnesses, and when the strength and hinge of a cause happeneth to be disclosed, as it may be by one trial, witnesses for bad purposes may be easily procured‡.

He then states, which is in favour of the rule, a resolution of the judges in Lord Sanquhar's case, Trinity 10 Jac. 1. The principal is outlawed, and thereupon the accessory is tried, convicted, and executed. The principal afterwards cometh in, reverseth the outlawry, and pleadeth over to the felony, and upon his trial (of course upon evidence of facts controverting the record) is acquitted.

* Fost. Cr. Law, 365.

† Mac Nally's Rules of Evidence, 466.

‡ Foster, 366.

This,

This, saith Coke, reverseth the attainder of the accessory *.

In order to convict the accessory, it is not necessary to enter into the detail of the evidence upon which the principal was convicted; but still, if it shall manifestly appear in the course of the accessory's trial that, in point of fact, the principal was innocent, common justice seemeth to require, that the accessory should be acquitted †.

A. is convicted upon circumstantial evidence, strong as that sort of evidence can be, of the murder of B. C. is afterwards indicted as accessory to this murder, and it cometh out upon the trial, by incontestible evidence, that B. is still living. Is C. to be convicted or acquitted? The case is too plain to admit of a doubt ‡.

Or suppose B. to have been in fact murdered, and that it should come out in evidence, to the satisfaction of the court and jury, that the witnesses against A. were mistaken in his person. A case of this kind Judge Foster mentions to have known, that A. was not, nor could possibly have been, at the murder §.

Mere *alibi* evidence, it must be admitted, lieth under a great and general prejudice, and ought to

* 9 Co. 119 — Fost. 367.

† Ibid.

‡ Foster, 367.

§ Ibid.

be heard with uncommon caution. But if it appeareth to be founded in truth, it is the best negative evidence that can be offered; it is really positive evidence which, in the nature of things, necessarily implieth a negative; and in many cases it is the only evidence an innocent man can offer*.

If these cases prove that, in any case whatsoever, the legal presumption against the accessory, founded on the conviction of the principal, may be repelled by contrary evidence, they prove as much as can be expected from them. The RULE IS RIGHT; the difficulty will lie in the application of it to particular cases. How far it is to be carried to cases, probably not equally strong, must, all circumstances duly weighed and considered, be left to the prudence, circumspection, and abilities of the learned judges, before whom the several cases may happen to come in judgment.

In considering the guilt of accessories distinct from principals, the general rule of the ancient law (derived from the Gothic constitutions) is, that accessories shall suffer the same punishment as their principals†; if one be liable to death, the

* Foster's Cr. Law, 368.

† By the law of Athens, delinquents and their abettors were to receive the same punishment. *Potter's Antiquities*, b. i. c. 26.

other is also liable*. It is natural, therefore, to ask, why are such refined distinctions made by law between accessories and principals? The reasons given by Judge Blackstone† are, “ 1. To distinguish the nature and denomination of crimes, that the accused may know how to defend himself when indicted, the commission of an actual robbery being quite a different accusation from that of harbouring the robber. 2. Because, though by the ancient common law, the rule is, as before laid down, that both shall be punished alike; yet now, by the statutes relating to the benefit of clergy, a distinction is made between them: accessories *after* the fact being still allowed the benefit of clergy in all cases except horse-stealing‡, and stealing of linen from bleaching grounds; which is denied to the principals and accessories *before* the fact in many cases, as, among others, in petit treason, murder, robbery, and wilful burning§. 3. Because formerly, no man could be tried as accessory till after the principal was convicted, or, at least, he must have been tried at the same time with him; though that law is now much altered. 4. Because, though a man may be indicted as accessory, and acquitted, he may afterwards be indicted as principal: for an acquittal of receiving or counselling a felon is no acquittal of the felony itself; but

* 3 Institutes, 188.

† Stat. 31 Eliz. c. 12.

‡ 4 Black. c. 3.

§ Stat. 18 Geo. II. c. 17.

it is a matter of some doubt, whether, if a man be acquitted as principal, he can be afterwards indicted as accessory *before* the fact; since those offences are frequently very nearly allied, and therefore an acquittal of the guilt of one may be an acquittal of the other also*. But it is clearly held, that one acquitted as principal may be indicted as an accessory *after* the fact; since that is always an offence of a different species of guilt, principally tending to evade the public justice, and is subsequent in its commencement to the other. Upon these reasons, the distinctions of principal and accessory will appear to be highly necessary, though the punishment is still much the same with regard to principals and such accessories as offend *before* the fact is committed †.”

A humane theoretical writer ‡ observes upon this subject, that perhaps if a distinction were constantly to be made between the punishment of principals and accessories even *before* the fact, the latter to be treated with a little less severity than the former, it might prevent the perpetration of many crimes, by increasing the difficulty of finding a person to execute the deed itself, as his danger would be greater than that of his accomplices, by reason of the difference of his punishment.

* 1 Hale's P. C. 625, 626.

† Black, Com. vol. iv. c. 3.

‡ Beccaria, c. 37.

In some tribunals a pardon is offered to an accomplice in a great crime, if he discover his associates. This expedient has its advantages and disadvantages. The disadvantages are, that the law authorizes treachery, which is detested even by the villains themselves, and introduces crimes of *cowardice*, which are much more pernicious to a nation than crimes of *courage*. The advantages are, that it prevents great crimes, the effects of which being public, and the perpetrators concealed, terrify the people. It also contributes to prove, that he who violates the laws, which are public conventions, will also violate private compacts. It appears, therefore, that a general law, promising a reward to every accomplice who discovers his associates, would be better than a special declaration in every particular case; because it would prevent the union of those villains, as it would inspire a mutual distrust among them, and each would be afraid of exposing himself alone to danger.

Before we conclude this topic it may be necessary to remark, that our penal code has, in the above respect, been justly animadverted upon by writers on criminal law; for several modern statutes* have encouraged delinquents to become approvers against others, guilty of the same felony, by hold-

* 4 and 5 W. & M. c. 18. 10 and 11 W. III. c. 3. 5 Ann. c. 31. 29 Geo. II. c. 30. 6 and 7 W. III. c. 178, 179. 6 Geo. I. c. 23. 8 Geo. II. c. 20.

ing out rewards and pardons to them, on discovery and conviction of their accomplices; and in some instances it is expressly provided, that the sums of money to be given to apprehenders and convictors of felons shall not render them incompetent witnesses*.

* 8 Geo. II. c. 16. § 9.

CHAP. V.

Of judging more particularly of the Guilt of Naval and Military Crimes, and passing Sentence.

HAVING premised these general remarks on discriminating the different degrees of guilt attending crimes, more especially those affecting principals and accessories, and the evidence on both sides being now closed, it remains for the members to deliberate upon the evidence produced for and against the prisoner, and to take into mature consideration the palliating circumstances, either offered in his defence, or that might have arisen in the investigation of facts. When they are fully prepared, the judge-advocate states the question respecting the prisoner's guilt, and which at naval courts martial is put to each member separately, beginning with the junior, and ending with the president, and is usually couched in the following words: "Are you of opinion that the charge against the prisoner is *proved* or *not proved*?" Or thus, "Is he guilty or not guilty of the crime laid to his charge?" Should the majority of members be of opinion that the charge is proved, those members consequently are to assign the punishment

ment to be inflicted upon the prisoner; and it is to be observed, that in order to give force and validity to the judgment of the majority, the sentence of a court martial is to be signed by all the members present, though they may differ in opinion *.

There are many crimes in the naval articles of war, that have expressly annexed to them the punishment of death without any alternative.

Thus, by article 3d, “If any officer, mariner, foldier, or other person of the fleet, shall give, hold, or entertain intelligence, to or with any enemy or rebel, without leave from the king’s majesty, or the lord high admiral, or the commissioners for executing the office of lord high admiral, commander in chief, or his commanding officer, every such person so offending, and being thereof convicted by the sentence of a court martial, shall be punished with *death*.”

* Vide Opinion of Attorney General, &c. to Query 5. App. No. XV. At general courts martial in the army, it is necessary, in judgment of death, that nine members out of thirteen concur therein; or two thirds of those present, where the court consists of more than thirteen members, should concur. The concurrence of two thirds in every capital sentence is likewise requisite in courts martial, held in Africa or in New South Wales, consisting of a lesser number than thirteen members.—*Mutiny Act*, sect. 12.

There are, besides the above, nine other articles of war, which inflict the punishment of death without any alternative *. These are in the following order, and for the crimes therein more specifically enumerated: namely, the last branch of article 10, for treacherously or cowardly yielding, or crying for quarter in action. Article 12. Cowardice, negligence, or disaffection, and in time of action withdrawing or keeping back, or not coming into fight or engagement, or not doing his utmost to take or destroy every *ship* which it shall be his duty to engage; and to assist and relieve all and every of his majesty's ships, or those of his allies, &c †. Article 13. Cowardice, negligence, or disaffection, in forbearing to pursue the chase of any enemy, pirate, or rebel, beaten or flying; or not relieving and assisting a known friend in view, to the utmost of his power. Article 15. Deserting to the enemy, pirate, or rebel; or running away with any of his majesty's ships or vessels of war, or any ordnance, ammunition, stores, or provisions, belonging thereto, to the weakening of the service, or yielding up

* Article 3.—the last branch of Art. 10.—Art. 12, 13, 15.—the first branch of Art. 19.—the first branch of Art. 22.—and Articles 25, 28, 29, all inflict the punishment of *death* without any alternative.

† The 12th Article has been altered and amended by stat. 19 Geo. III. cap. 17. and it is now lawful to pronounce sentence of death, or such other punishment as the nature and degree of the offence shall be found to deserve.

the

the same cowardly or treacherously to the enemy, pirate, or rebel.

The first branch of article 19. Making, or endeavouring to make any mutinous assembly, upon any pretence whatsoever.

The first branch of article 22. Striking a superior officer, or drawing, or offering to draw, or lifting up any weapon against him, being in the execution of his office, on any pretence whatsoever. Article 25. Unlawfully burning or setting fire to any magazine, or store of powder, or ship, boat, ketch, hoy, or vessel, or tackle or furniture thereunto belonging, not then appertaining to an enemy, pirate, or rebel. Article 28. For all murders committed by any person in the fleet. Article 29. The unnatural and detestable sins therein named with man or beast.

In the military articles we find two instances only, empowering a court martial to inflict the punishment of *death* without alternative.

First, the 11th article of the 14th section, ordains, that “ Whatsoever officer, non-commissioned officer, or soldier, shall do violence to any person, who brings provisions or other necessaries to the camp, garrison, or quarters of the king’s forces, employed in foreign parts, and shall be convicted thereof

thereof by a general court martial, shall suffer *death*."

Secondly, the 12th article of section 14, declares, that "whosoever of our forces, employed in foreign parts, shall force a safe-guard, and shall be convicted thereof by a general court martial, shall suffer *death*."

The mutiny act, section 4. declares, "that when a court martial shall not think the offence (of desertion) deserving of capital punishment, such court may, instead of awarding a corporal punishment, adjudge the offender to be transported as a felon for life, or for a certain term of years; and if such offender shall afterwards, without leave, return into Great Britain or Ireland, before the expiration of the term limited by such sentence, he shall, on conviction thereof, be deemed and adjudged guilty of felony, and shall suffer *death* as a felon without benefit of clergy."

In this place it may not be improper to make a few remarks on the sentence of a general court martial, held at the Cape of Good Hope (November 1797), upon the trial of John Macklin, a private foldier of the 86th regiment, who being found guilty of mutinous behaviour, was adjudged "to receive one thousand lashes *in the usual manner*, and be transported for life to Botany Bay."

The

The present learned judge-advocate-general (Sir Charles Morgan, Bart.), in his letter to the deputy judge-advocate, bearing date the 12th July, 1798, delivered his opinion on this sentence with his usual perspicuity; and which we think it our duty to recite in his own words, that members of military courts martial may not inadvertently fall into similar errors of judgment.

“ A sentence of transportation (he observes) has not, in any instance within my knowledge, been carried into effect, except for the crime of desertion; nor in the instance of desertion, until an express clause was inserted in the mutiny acts for that purpose. And I have had occasion to know, that much doubt has been entertained, whether, without such particular provision, the judgment would be warrantable. And the conferring of an authority by an express clause to give such sentence for the crime of desertion, at the same time that it furnishes a presumptive argument, that it would not otherwise have been correct, begets a still stronger presumption, that in any other case than that which is provided for, it is not regular to award such punishment. And there is one evident distinction between the case of desertion, and that of mutiny. A soldier who is disposed to desert, may, with propriety be sent to a place whence it will not be easy to get away; and being prevented therefrom he may possibly become useful. But a soldier of a mutinous disposition or habit, may be equally dangerous in a station,

station, to which he is sent, as in that from which he is removed ; and moreover, the commander of the regiment, to which it may be proposed to place him, may have a reasonable objection to receiving such a recruit *.

“ Permit me further to recommend, whenever the clause of the mutiny act here alluded to is acted upon, that the adjudication be made in the terms thereby prescribed ; namely, that the prisoner do
“ Serve as a soldier in a corps stationed, &c.”

“ As this letter is already drawn into a greater length than I intended ; I will only trouble you with one more hint, viz. that it will have the air of more solemnity, and will not give any more trouble in the case of corporal punishment, instead of using the vulgar expression “ in the usual manner,” to point out the mode in which the sentence is to be *inflicted* ; such for instance, as that the prisoner receive ——— lashes on his bare back with a cat of nine tails, if it be so intended.”

It may not be improper to note that the clause alluded to, viz. the 4th of the mutiny act, which authorizes an adjudication to serve abroad, in the case of desertion, directs, that the same shall be *instead of corporal punishment*, not in addition thereto.

* See a similar case stated to judge advocate-general, and his opinion to Query 3. Appendix, No. LXV.

In comparing the crimes punishable with *death*, in the naval and military codes, we find no less than ten articles, or branches of articles, in the former, to only two in the latter, which expressly inflict the *ultimum supplicium*, without leaving any discretionary power to the members of a court martial to inflict an inferior punishment. This, together with the frequency of capital punishment, in the English criminal code of laws, and for crimes very different in their nature, are, perhaps, circumstances to be seriously lamented. It is a melancholy truth animadverted upon by foreign writers on criminal laws, that among the variety of actions which the natives of England are liable to commit, no less than one hundred and sixty have been declared by acts of parliament to be felonies without benefit of clergy; or, in other words, to be worthy of instant death. Yet, in other respects, our laws are famous for their benignity*. On this topic our learned commentator, Blackstone, observes, "So dreadful a list, instead of diminishing, increases the number of offenders. The injured, through compassion, will often forbear to prosecute: juries, through compassion, will sometimes forget their oaths; and either acquit the guilty, or mitigate the nature of the offence; and judges, through compassion, will respite one half of the convicts, and recommend them to the royal mercy. Among so many chances of

* 4 Black. Com. p. 18. Ruffhead's Index to the Statutes (Tit. Felony); and the acts which have since been made.

escaping,

escaping, the needy and hardened offender overlooks the multitude that suffer; he boldly engages in some desperate attempt to relieve his wants, or to supply his vices; and if, unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate, in falling at last a sacrifice to those laws, which long impunity has taught him to contemn." Theoretical writers also maintain, that the necessity of uniting in society, being granted, together with the conventions, which the opposite interests of individuals must necessarily require, a scale of *crimes* might be formed, of which the first degree should consist of those which immediately tend to the dissolution of society, and the last of the smallest possible injustice done to a private member of that society. Between those extremes would be comprehended all actions contrary to the public good, which are called criminal, descending by insensible degrees from the highest to the lowest. If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of *punishments*, descending from the greatest to the least; but it will be sufficient that the wise legislator mark the principal divisions, without disturbing the order, lest to crimes of the *first* degree, be assigned punishments of the last. If there were an exact and universal scale of crimes and punishments, we should then have a common measure of the degree of liberty and slavery, humanity and cruelty of different nations *.

* Beccaria on Crimes and Punishments.

Excessive punishments may even corrupt a despotic government ; of this we have an instance in Japan *. Here almost all crimes are punished with *death*, because disobedience to so great an emperor as that of Japan, is reckoned an enormous crime.

In other countries the punishment of death is inflicted with all the lingering tortures that the merciless ingenuity of man can devise. In some, racks, axes, knives, pincers, hot irons, and various instruments of torture, are resorted to. In others we hear of limbs torn asunder by horses, of crucifixions, burnings, boilings, flayings, impalements, and various contrivances of destruction revolting to humanity. The modes of capital punishment, used by the Romans, were at least as numerous and as cruel as those of other nations. The head of the malefactor was, in some cases, fastened within the *furca*, and in this attitude he was whipped to death † : and this was distinguished by the name of *supplicium more majorum* ‡. In other cases the whipping terminated in beheading. Crucifixion was in use during many centuries, and first abrogated by Constantine §. Parricides were sewn up in a leathern sack, with an ape, a cock, a serpent, and a dog, and so cast into the sea ||. It was also usual to

* Mont. book vi. cap. 13.

† Suet. in Vita Calig. cap. 27.

‡ Ibid. in Vita Neron. cap. 49.

§ Liv. l. i. and Val. Max. l. i. cap. 7.

|| Juval. viii.

cover some offenders with a mantle, daubed over with pitch, and then to set fire to it.

The punishments inflicted by the regal laws, and those of the twelve tables, (which were extremely cruel, and contrary to the republican spirit), were almost all abolished, after the expulsion of the decemvirs. The *Porcian* law ordained, that no citizen of Rome should be put to death; and at this epoch, Livy says, in speaking of the Romans, that no people were ever fonder of moderation in punishments*.

Sylla, who confounded tyranny, anarchy, and liberty, made the *Cornelian Laws*. He seemed to have contrived laws and regulations, merely with a view to create new crimes. Thus distinguishing an infinite number of actions by the name of *murder*, he found *murderers* in all parts; and, by a practice but too much followed, he laid snares, thorns, and opened precipices wheresoever the citizens set their feet†.

* Mont. Spirit of Laws, book vi. cap. 15.

† The military laws of Athens inflicted the punishment of death on every person who should betray a garrison, ship, or army. Also, all revoltors to the enemy, and such as refused to serve at sea after a lawful summons, were themselves and their posterity condemned to ignominy or disfranchisement; a punishment to the feelings of an Athenian equal to death. *Potter's Ant. of Greece*, book iii. cap. 22.

The British legislature has very wisely and humanely provided by the mutiny act, that no sentence of death shall be pronounced against any offenders tried by a general court martial, unless *nine* of the members, where the court consists of thirteen, or *two thirds*, where the number of members is greater, shall concur in that sentence; and the concurrence of two thirds is likewise requisite in courts martial, held in Africa, or New South Wales, of a less number than thirteen members*.

The statutes of 22 Geo. II. cap. 33. and 19 Geo. III. cap. 17. for regulating naval courts martial, and reducing into one act of parliament the laws relating to the government of his majesty's ships, vessels, and forces by sea, make no mention of the number of members necessary to concur in their votes on passing sentence of death, or inflicting any discretionary punishment†. But, as has been already noticed, in a former part of this work, it is

* Mutiny Act (1804), sect. 18.

† In the year 1749, when the bill for amending and reducing into one act of parliament the laws relating to the navy was brought into parliament, a clause was offered for providing, That in case of any capital crime to be tried in Great Britain, or in the Narrow Seas, the number of the court martial should not be less than thirteen, of which nine should be for the sentence of death: and in all other parts, where five might constitute a court martial, four of the five should concur in the sentence of death. But upon the question's being put, the clause was rejected without a division. See Parliamentary Debates, vol. ii. p. 268.

the usage for naval courts martial, in all cases, to settle the determination of the court by the majority of voices. This is consonant to the laws of the realm, where there are a number of judges appointed to adjudge a point of law or fact: for the same must be settled and decreed by a majority in the courts of King's Bench, Common Pleas, and Court of Exchequer. And should an equality of votes, including the president, occur in any case, at a naval court martial, the question, on the same reasonable rules adhered to by the civil courts of judicature, must remain undecided*.

Naval and Military Articles, which inflict Death, or a Discretionary Punishment.

The 12th article of war, as it formerly stood, positively prescribed death; and, as we have in a former part of the work observed, the unfortunate Admiral Byng fell under a breach of part of it, the hardship of this case the court could not resist expressing, in strong terms, in the body of the sentence; and though he was acquitted of the most odious parts of the charges, viz. cowardice and disaffection, and recommended, in the conclusion of the sentence, to mercy, accompanied with a letter from the court to the lords of the admiralty, complaining of the severity of the 12th article of war, which admitted

* See Case and Opinion of Counsel relative to the question of an equality of votes. Ap. No. IV.

of no mitigation, and praying their lordships, in the most earnest manner, to recommend the admiral to his majesty's mercy * ; yet he suffered, pursuant to sentence, the completion of human punishment.

The 12th article of war, as it now stands by the amendment, 19 Geo. III. c. 17. and some other articles in the cases specified, leave it discretionary to the court to inflict the punishment of death, or *such other punishment as the nature and degree of the offence shall be found to deserve* †.

The other naval articles of war which inflict death, or *such other punishment as a court martial shall think the offence deserves*, are as follow : article 4. concealing any letter or message, from an enemy or rebel, and not acquainting the superior or commanding officer therewith, within twelve hours after having an opportunity so to do, or not revealing the same to the commander in chief of the squa-

* Vide Sentence, and Letter to the Admiralty. Appendix, No. XXXIV. sect. 1 and 2.

† Vide Articles 4, 5, 6. the first branch of art. 10. art. 11. art. 12. as now amended, the second branch of art. 19, second and third branches of art. 22. art. 26, 27. Appendix, No. I.

We have an extraordinary instance of a sentence mulcting five years pay, in addition to the punishment of dismissal from his majesty's service. This happened to Captain Cornelius Mitchell, who was tried (August 1746) for misconduct, in withdrawing and keeping back, or not doing his utmost, &c. in action with M. de Conflans, off Hispaniola.

dron. Article 5. all spies, and all persons whatsoever, who shall come or be found in the nature of spies, to bring or deliver any seducing letters or messages from any enemy or rebel, or endeavour to corrupt any captain, officer, mariner, or other in the fleet, to betray his trust. Article 6. relieving an enemy or rebel with money, victuals, powder, shot, arms, ammunition, or any other supplies whatsoever, directly or indirectly. Article 11. for not observing the orders of the admiral, flag officer, commander of any squadron or division, or other his superior officer, for assailing, joining battle with, or making defence against, any fleet, squadron, or ship; or who shall not obey the orders of his superior officer, in time of action, to the best of his power, or shall not use all possible endeavours to put the same effectually into execution. Article 14. When action, or any service shall be commanded, delaying or discouraging the said action or service, upon pretence of arrears of wages, or upon any pretence whatsoever. Article 16. every person in or belonging to the fleet, who shall desert, or entice others so to do *. Article 17. not faithfully performing their duty, and defending the ships and goods in their convoy, without either diverting to other parts or occasions, or refusing or neglecting to

* On the 6th March, 1780, R. Devereux, boatswain of the Centaur, and on the 24th May, 1780, John Webber, boatswain, and James Knight, captain's clerk of the Blast, were adjudged to be hanged for desertion, by the sentences of courts martial. See *Chronological List of Trials*.

fight in their defence if they be assailed, or running away cowardly, and submitting the ships in their convoy to peril and hazard ; or who shall demand or exact any money or other reward from any merchant or master, for convoying of any ships or vessels intrusted to their care, or shall misuse the masters or mariners thereof, shall be condemned to make reparation of the damage to the merchants, owners, and others, as the court of admiralty shall adjudge ; and also be punished criminally according to the quality of their offences *. Article 19. persons who shall utter any words of sedition or mutiny, shall suffer death or such other punishment as a court martial shall deem them to deserve. And if any officer, mariner, or soldier, in or belonging to the fleet, shall behave himself with contempt to his superior officer, such superior officer being in the execution of his office, he shall be punishable according to the nature of his offence, by the judgment of a court

* Captains of his majesty's ships intrusted with convoy, have the power of bringing to punishment the masters of merchant vessels under convoy who may be refractory. For by stat. 33 Geo. 3. cap. 66. sect. 8. it is enacted, " That if any master of a merchant ship under convoy, shall wilfully disobey signals or instructions, or any other lawful commands of the commander of the convoy, or shall desert the convoy, without notice given, and leave obtained for that purpose, he shall be liable to be articulated against in the High Court of Admiralty, at the suit of the crown, for disobedience to the orders of the convoy ; and upon conviction thereof, shall be fined, at the discretion of the said court, in any sum not exceeding five hundred pounds, and shall suffer such imprisonment, not exceeding one year, as the court shall adjudge."

martial. Article 22. if any officer, mariner, soldier, or other person in the fleet shall presume to quarrel with any of his superior officers, being in execution of his office, or shall disobey any lawful command of any of his superior officers, every such person, being convicted of any such offence, by the sentence of a court martial, shall suffer death, or discretionary punishment. Article 26. care shall be taken in the conducting and steering of any of his majesty's ships, that through wilfulness, negligence, or other defaults, no ship be stranded, or run upon any rocks or sands, or split, or hazarded. Article 27. no person in or belonging to the fleet, shall sleep upon his watch, or negligently perform the duty imposed on him, or forsake his station. Article 30. all robbery committed by any person in the fleet is also punished with death, or at the discretion of a court martial.

The military code has no less than seventeen articles, which inflict the punishment of death, or *or such other punishment as a court martial shall judge fit*, namely, in section 1. 2. 3. and 4. of the mutiny act, and in the articles of war, section 2. articles 3. 4. and 5. section 6. article 1. section 14. articles 10. 13. 14. 15. 16. 18. 19. 20. and 21., and the offences falling under each article, are briefly enumerated as follows, viz. by mutiny act, sect. 1. exciting, causing, or joining in any mutiny or sedition, or not using the utmost endeavours to suppress

suppress the same. Misbehaving before the enemy, or shamefully abandoning or delivering up any garrison, fortrefs, post, or guard, compelling the governor or commanding officer of any garrison, &c. to deliver up to the enemy, or to abandon the same, or inducing others to do the like; or found sleeping on his post, or corresponding with, or giving intelligence to any rebel or enemy of his majesty, or entering into any terms with such rebel or enemy, without his majesty's licence, or licence of the general or chief commander; or striking or using any violence against his superior officer, being in the execution of his office; or disobeying any lawful command of his superior officer; or deserting his majesty's service. Section 2. non-commissioned officers and soldiers enlisting in any other regiment, troop, or company, without having first obtained a regular discharge therefrom. Section 3. deserters enlisting in another regiment may be punished with death or otherwise, by a court martial, in such regiment in which he last enlisted, as if he had originally belonged to the same. Section 4. a deserter may be adjudged to be transported as a felon, when tried and convicted by a court martial, and when the offence is not judged deserving of a capital punishment; but should he afterwards return to Great Britain or Ireland before the expiration of the term limited by the sentence of such court martial, he shall suffer death as a felon, without benefit of clergy. In the articles of war framed by his majesty, we find that section 2.

articles 3. 4. and 5. enforce, in a special manner, the 1st section of the mutiny act; but the reader will observe, that in section 2. article 5. which specifies an offence of a similar nature as that contained in the 22d article for the discipline and government of the navy, has not the same severity of punishment annexed to it; for it enacts, that any officer, non-commissioned officer, or soldier, who shall strike his superior officer, or shall draw or offer to draw, or lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or *such other punishment as by a general court martial shall be awarded.* The naval article inflicts the punishment of *death* for the same offence without *any alternative.* The other military articles which inflict death, or give a discretionary power to inflict such other punishment as a court martial shall think fit are in sect. 6. art. 1. for deserting or enlisting in any other regiment, troop, or company, without being regularly discharged.

In section 14, art. 10. for a sentinel found sleeping upon his post, or leaving it before he be regularly relieved. Art. 13. for making known the watch-word to any person who is not entitled to receive it according to the rules and discipline of war, or presuming to give a parole or watch-word different from what he received. Art. 14. any person in the service employed in his majesty's dominions,

minions, beyond the seas, or in foreign parts, discharging fire arms, drawing of swords, beating of drums, or by any other means occasioning false alarms in camps, garrisons, or quarters. Section 14. art. 15. holding correspondence with, or giving intelligence to the enemy, either directly or indirectly. Section 14. art. 16. relieving the enemy with money, victuals, or ammunition; or knowingly harbouring or protecting an enemy. Section 14. art. 18. officer, non-commissioned officer, or soldier, leaving his commanding officer, or his post or colours, to go in search of plunder. Section 14. art. 19. casting away arms or ammunition, when employed in foreign parts. Section 14. art. 20. misbehaving before the enemy, or abandoning or delivering up any garrison, fortress, post, or guard. Section 14. art. 21. compelling the governor or commanding officer of any garrison, fortress, post, or guard, to deliver up to the enemy, or abandon the same, or speaking words, or using any other means to induce such governor, commanding officer, or others, to misbehave before the enemy.

Discretionary Punishment.

Some articles omit the word *death*, and leave the punishment to be inflicted, to the discretion of a court martial*; and as those articles are for the

* Naval Articles 1, 2. 7, 8, 9. The third branch of art. 19. Art. 20, 21. 23, 24. 30. 32. Ap. No. I.

punishment of offences not of so flagrant a nature, it is obvious that the wisdom of the legislature meant to exclude the power of a court martial to inflict a capital punishment, for any of the specific offences left discretionary.

The naval articles of war, which leave to a court martial the power of inflicting discretionary punishment, enumerate the following offences, viz. Article 2. prophane oaths, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners. Article 7. for not delivering up all the papers, charter-parties, bills of lading, passports, and other writings, that shall be taken or found on board any ship or vessel taken as a prize. Article 8. taking out of any ship seized as a prize, any money, plate, or goods, unless it shall be necessary for the better securing thereof, before the same be adjudged lawful prize in some admiralty court, &c. Article 9. stripping any of the officers, mariners, or other persons belonging to a prize, of their cloaths, or in any sort pillaging, beating, or ill-treating such persons. The third branch of article 19. behaving with contempt to a superior officer, such superior officer, being in the execution of his office. Article 20. concealing any traitorous or mutinous practice or design; or concealing any traitorous or mutinous words, spoken by any person in the fleet, to the prejudice of his majesty or government; or any words, practice, or design, tending

tending to the hindrance of the service, and not forthwith revealing the same to the commanding officer; or being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same *. Article 21. attempting to stir up any disturbance in the fleet, on the pretext of the unwholesomeness of provisions, &c. Article 23. quarrelling or fighting with any other person in the fleet, or using reproachful speeches or gestures, tending to make any quarrel or disturbance. Article 24. wasteful expence of any powder, shot, ammunition, or other stores in the fleet, or any embezzlement thereof. Article 32. a provost-marshal's refusing to apprehend any criminal, whom he shall be authorised by legal warrant to apprehend, or refusing to receive or keep any prisoner committed to his charge, or wilfully suffering him to escape being once in his custody, or dismissing him without lawful order. And also all captains, officers, and others, who shall not endeavour to detect, apprehend, and bring to punishment all offenders, and shall not assist the officers appointed for that purpose.

* John Orde, first lieutenant of the Stag, was tried January 1762, on this article, and for having confined his captain, and was dismissed the ship. The other commissioned and warrant officers were also tried on the 4th February, 1762, but were acquitted of any design of mutiny, and only reprimanded, as it appeared that they met together in compliance with the request of their first lieutenant for their opinions. See *Chronological List of Trials*.

Article

Article 34. provides for crimes committed on shore in any part of his majesty's dominions, viz. Every person being in actual service and full pay, and part of the crew in or belonging to any of his majesty's ships or vessels of war, who shall be guilty of mutiny, desertion, or disobedience to any lawful command, in *any part of his majesty's dominions on shore when in actual service*, shall be liable to be tried by a court martial, and suffer the like punishment for every such offence as if the same had been committed at sea, on board of any of his majesty's ships or vessels of war.

Art. 35. provides for crimes or offences *committed on shore in any place out of his majesty's dominions*, viz. If any person who shall be in actual service and in full pay in his majesty's ships and vessels of war, shall commit upon the shore, in any place or places out of his majesty's dominions, any of the crimes punishable by these articles and orders, the person so offending shall be liable to be tried and punished for the same, in like manner to all intents and purposes, as if the said crimes had been committed at sea on board any of his majesty's ships or vessels of war.

The military articles, which leave a discretionary power to a court martial to inflict punishment, have the following offences enumerated, viz. :

Section

Section 1. art. 4. prophaning any place dedicated to divine worship, or offering violence to a chaplain of the army, or to any other minister of God's word. Section 1. art. 5. chaplains absenting themselves without leave, from regiments or garrisons. Article 6. chaplains guilty of drunkenness or other scandalous behaviour shall be discharged from their office.

Section 2. art. 1. non-commissioned officer or soldier using traitorous or disrespectful words against the royal person or any of the royal family. Sect. 2. art. 2. behaving with contempt or disrespect towards the general or other commander in chief, or speaking words tending to his hurt or dishonour. Section 5. art. 2. the commanding officer of any regiment, &c. in *South Britain*, not transmitting in the beginning of every month to the commander in chief or secretary at war, an exact return of the state of the regiment, &c. Section 5. art. 3. and 4. returns in like manner of the state of the forces in Ireland to be made to the lord lieutenant, or to the chief governor, &c., and in North Britain to the officer there commanding in chief; and the returns of the forces abroad to be made by the respective governors or commanders there residing. Section 6. art. 4. non-commissioned officer or soldier absenting himself without leave from his troop or company, &c. Section 6. art. 5. officer, non-commissioned officer, or soldier, advising or persuading any other officer or soldier to desert the service.

Section

Section 7. art. 2. and 3. non-commissioned officer or foldier fending a challenge to any other, or fuf-fering any to go out to fight a duel, as well as all feconds, promoters, and carriers of challenges.

Section 7. art. 4. refusing to obey officers, of whatever condition (and though of an inferior rank), in quelling all quarrels, frays, and diforders, though the perfons concerned fhould belong to another regiment, troop, or company. Section 7. art. 5. upbraiding another for refusing a challenge, punifh-able as a challenger.

Section 9. art. 1. non-commissioned officers de-manding billets for quartering more than the num-ber of effective men, or taking money for freeing of landlords. Section 9. art. 5. officers commanding in quarters, garrifons, or on a march, refusing to fee juftice done for abufes or diforders, committed by any officer or foldier under his command, &c.

Section 10. commanding officers on the march to apply for carriages, and to pay for them ac-cording to the mutiny act, and not to fuffer the perfons attending them to be abufed, or the car-riages to be overloaded; and refusing to grant certificates fpecifying the fums due for the ufe of fuch carriages in cafe of failure of money, liable to be cashiered, or otherwife punifhed at the discre-tion of a general court martial.

Section

Section 13. art. 3. a non-commissioned officer or soldier selling or spoiling his arms, clothes, accoutrements, or regimental necessaries. Section 13. art. 5. a non-commissioned officer embezzling or misapplying any money with which he may have been intrusted for the payment of the men under his command, or for enlisting men into the service.

Section 14. art. 1. officers and men on their march committing any waste or spoil, either in walks, trees, parks, warrens, fish-ponds, houses, gardens, &c. or maliciously destroying any property whatsoever, unless by order of the then commander in chief, to annoy rebels, or other enemies in arms. Art. 2. non-commissioned officers and soldiers not to go one mile from the camp without leave in writing. Art. 3. laying out of his quarters, garrison, or camp without leave. Art. 4. not retiring to his quarters or tent at the beating of the retreat. Art. 5. officers, &c. failing to repair, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer. Art. 6. no soldier belonging to any of the regiments of life-guards, horse-guards, or foot-guards, or any other regiment of horse or dragoons to hire another to do his duty. Art. 7. non-commissioned officer conniving at the hiring of duty. Art. 8. non-commissioned officer or soldier quitting his platoon or division. Art. 9. commissioned or non-commissioned officers and soldiers found drunk on guard, the former cashiered, and the two latter to be punished at the discretion

5

discretion of a court martial. Art. 14. any person in the army, employed in Great Britain or Ireland, Jersey, Guernsey, Alderney, Sark, or Man, discharging fire-arms, drawing of swords, beating of drums, or by any other means whatever occasioning false alarms in camp, garrison, or quarters. Art. 19. any person belonging to the army employed in Great Britain or Ireland, Jersey, Guernsey, Sark, and Man, casting away arms or ammunition.

Section 16. art. 19. menacing words, signs, or gestures, in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings. Art. 23. an officer commanding a guard, or provost marshal, presuming to release any prisoner committed to his charge without proper authority for so doing. Art. 24. prisoners' names and crimes to be returned within 24 hours after the commitment.

Hence we perceive that there are only ten articles in the navy which enumerate offences attaching to them punishments at the discretion of a court martial; whereas there are no less than thirty in the military code. It is obvious that, for any of the offences specified in these articles, the legislature intended that no court martial could, on conviction of any offender, legally inflict the punishment of death. The crimes of a higher nature already noticed, are, by the military and naval articles of war, to be punished with *death*, or *at the discretion of a*

court martial ; consequently the *ultimum supplicium* cannot be extended to those offences of an inferior nature specified in the articles of war classed under the head of discretionary powers or punishments, and which do not, in the first instance, express *death*.

*Cashiering, or dismissal from His Majesty's
Service.*

There are some naval and military articles which do not leave a discretionary power to the court martial, but expressly restrict the punishment to cashiering the offender, or cashiering and for ever after rendering him incapable to serve in any place or office in the naval or military service of his majesty, his heirs and successors ; other articles inflict the punishment of dismissing the offender from his majesty's service with the addition of a fine ; namely, by the naval articles, the last branch of the 16th article declares, that if any commanding officer of his majesty's ships or vessels, shall receive or entertain a deserter from any other of his majesty's ships or vessels, after discovering him to be such deserter, and shall not with all convenient speed give notice to the captain of the ship or vessel to which such deserter belongs ; or, if the said ships or vessels be at any considerable distance from each other, to the secretary of the admiralty, or to the commander in chief ; every person so of-

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fending, and being convicted thereof by the sentence of a court martial, shall be cashiered.

By article 18. it is declared, that if any commanding officer of his majesty's ships or vessels shall receive on board, or permit to be received on board such ship or vessel, any goods or merchandizes whatsoever, other than for the sole use of the ship or vessel, except gold, silver, or jewels, and except the goods and merchandizes belonging to any merchant, or other ship or vessel, which may be shipwrecked or in imminent danger of being shipwrecked, either on the high seas, or in any port, creek, or harbour, in order to the preserving them for their proper owners; and except such goods or merchandizes as he shall at any time be ordered to take or receive on board by order of the lord high admiral of Great Britain, or the commissioners for executing the office of lord high admiral for the time being; every person so offending, being convicted thereof by a sentence of a court martial, shall be cashiered, and be for ever afterwards rendered incapable to serve in any place or office in the naval service of his majesty, his heirs and successors. Article 31. every officer or other person in the fleet, who shall knowingly make or sign a false muster or muster-book, or who shall command, counsel, or procure the making or signing thereof, or who shall aid or abet any other person in the making

making or signing thereof, shall, upon proof of any such offence being made before a court martial, be cashiered, and rendered incapable of further employment in his majesty's naval service. Art. 33. If any flag-officer, captain, or commander, or lieutenant, belonging to the fleet, shall be convicted before a court martial of behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner, unbecoming the character of an officer, he shall be dismissed from his majesty's service.

We cannot dismiss the class of offences to which the naval articles of war have expressly adjudged the punishment of cashiering, or dismissal from his majesty's service, without making a few brief remarks on the singular case of Captain Isaac Coffin, of his majesty's ship *Thistle*. He was tried by a court martial at Halifax, North America, 21st May, 1788, on charges exhibited against him for false musters, which were partly proved; but as it appeared to the court, that no fraud was meant or did happen, the offence of false musters was mitigated, and the sentence adjudged him to be dismissed the ship*.

Soon after the lords commissioners of the admiralty, under the administration of Earl Howe, took into consideration the supposed lenity of this sentence, and conceiving it was deficient by not in-

* See *Chronological List of Trials*.

inflicting the punishment of cashiering, or dismissal from his majesty's naval service, agreeably to the tenor of the thirty-first article of war, under which the offence had fallen; their lordships thought proper to add to the punishment adjudged by the said sentence, and accordingly effaced his name from the list of captains, and thereby virtually rendered him incapable of further employment in his majesty's service.

Captain Coffin having preferred a memorial to his majesty in council, stating the hardship of his case, it was referred to the twelve judges for their joint opinion. On the 33d January, 1790, the judges reported to his majesty in council that the sentence of the court martial was not legal; and that the punishment directed to be inflicted by an act of the 22 Geo. II. c. 33. upon persons convicted of the offences specified in the thirty-first article of war established by that act, could not be inflicted, or judgment thereon be *pronounced or supplied by any other authority than that of the court martial which tried the offender.*

The sentence of the court martial appears to have been illegal, for it is obvious there could be no mitigation of the charge of false musters, although from the conscious way in which the members qualified the sentence, it would have been more regular to have pronounced a sentence of acquittal. A charge of this nature should have been declared
proved

proved or not proved; consequently the sentence should have either adjudged the proportionate punishment to the offence, as prescribed in the thirty-first article of war, or it should have acquitted the person tried.

The report of the judges in this case conveys also an impressive lesson; namely, that any punishment directed to be inflicted by the articles of war, cannot be supplied by any other authority than that of the court martial which tried the offender. Hence, this report is founded on those humane and constitutional principles of law, established and recognised in this country; namely, that the executive power cannot add to the punishment adjudged to be inflicted for offences tried at courts martial, but it may, in the exercise of its prerogative of clemency, remit, mitigate, or diminish the punishment*.

We find, likewise, that in military courts martial, the articles of war define the express punishment of cashiering or dismissal from his majesty's service for certain offences, nearly similar to those enumerated in the naval articles, but of greater variety and extent.

* Captain Coffin, the active and zealous officer alluded to in the above case, was soon after reinstated in the service; served as resident commissioner of his majesty's navy at Sheerness; was promoted to the rank of rear-admiral in 1804, and created a baronet.

Section 1. art. 6. Chaplain guilty of drunkenness, or other scandalous or vicious behaviour, derogating from the sacred character.

Section 2. art. 1. Speaking traitorously or disrespectfully against the King or any of the royal family.

Section 4. art. 2. Signing false certificates relating to the absence of either officer, or non-commissioned officer, or private soldier. Art. 3. Making false musters, or signing false muster-rolls. Art. 4. Any commissary or muster-master taking money by way of gratification on the mustering any regiment, troop, or company, or on the signing the muster-rolls.

Section 5. art. 1. Every officer knowingly making false returns of the state of the regiment, troop, or company, or garrison, under his command.

Section 6. art. 2. Any officer knowingly receiving and entertaining any non-commissioned officer or soldier belonging to another corps, or not, on discovering him to be a deserter, shall confine him, and give notice thereof to the corps in which he last served, if in Great Britain or Ireland; or, if abroad, to the secretary at war.

Section 7. art. 2. Any officer, non-commissioned officer, or soldier, sending a challenge to any other officer

officer, non-commissioned officer, or soldier, to fight a duel. Art. 3. Any officer, or non-commissioned officer, commanding a guard, knowingly and wilfully suffering any person whatsoever to go forth to fight a duel, shall be punished as a challenger; and likewise all seconds, promoters, and carriers of challenges. Art. 5. The person upbraiding another for refusing a challenge is himself subject to be punished as a challenger.

Section 8. art. 4. Any governor or officer commanding in any garrison, forts, or barracks, exacting exorbitant prices for houses or stalls, let out to futtlers, or conniving at the like exactions in others, &c. Art. 5. Selling victuals, liquors, or other necessaries of life, or merchandizes, to the soldiers under his command, at exorbitant prices.

Section 9. art. 1. Any officer or non-commissioned officer demanding billets for quarters more than the number of his effective men; or quartering, wives, children, men or maid servants; or taking money for freeing of landlords from quartering officers and private men. Art. 2. Commanding officer to see the quarters cleared weekly, and to give certificates, if necessary, for money due in quarters, specifying the sums due, and to transmit duplicates of the said certificates to the paymaster-general.

Section 10. Commanding officers on the march to apply to the proper magistrates for carriages, and to pay for them as directed by the mutiny act; not to suffer more than thirty hundred weight to be loaded on any waggon; and, in case of failure of money, to grant certificates, specifying the sums due for the use of such carriages.

Section 11. art. 1. Commanding officers are, upon application, to use their utmost endeavours to deliver over to the civil magistrate any officer, non-commissioned officer, or soldier, accused of crimes punishable by the known laws of the land, and to be aiding to the officers of justice in securing such offenders. If they wilfully neglect or refuse to be aiding and assisting as aforesaid, the officer or officers so offending shall, on conviction before a general court martial, be cashiered. But by section 24. art. 4. it is ordained that, notwithstanding of the directions in the 11th section, courts martial may punish criminals at Gibraltar, *and the island of Malta**, or in places beyond the seas, where there is no civil judicature in force, for offences not punishable by the articles of war; such as murder, theft, robbery, rape, coining, or clipping the coin of Great Britain, or any foreign coin current in the garrison or place

* The words in italics are an amendment made to this article, March 1805.

where

where committed ; or for having used violence against the persons or property of his Majesty's subjects, or of any others entitled to protection ; and the persons so accused, if found guilty, shall suffer death, or such other punishment as may be awarded by a general court martial. Art. 2. No officer to protect any person from his creditors on the pretence of his being a soldier, nor any non-commissioned officer or soldier who does not actually do all duties as such. Any officer offending shall, on conviction, be cashiered.

Section 13. art. 4. Any commissioned officer embezzling or misapplying any monies with which he may have been entrusted for the payment of the soldiers under his command, or for enlisting men, or for any regimental purpose, he shall, on conviction thereof by a general court martial, be dismissed his majesty's service ; and if a warrant officer he shall, in like manner, be dismissed the service, and forfeit the arrears due to him on account of his pay, or so much thereof as shall be sufficient to make good the deficiency occasioned by such embezzlement or misapplication. But in case he should have been originally a private soldier, he may be reduced to serve in the capacity of a non-commissioned officer or private soldier, and to be put under stoppages until the money embezzled shall have been made good.

Section

Section 16. art. 25. Any officer under arrest, leaving his confinement before he is set at liberty by the officer who confined him, or by a superior power, shall, on being convicted thereof, by a general court martial, be cashiered.

Section 16. art. 26. being almost synonymous in purport to the naval article 33. ordains a similar punishment; for it is thereby declared, that "Whatsoever commissioned officer shall be convicted before a general court martial of behaving in a scandalous infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from his majesty's service." A necessary proviso, however, is annexed to the military article that is not found in the naval, and which is requisite in all offences generally defined: namely, "that in every such charge preferred against an officer for such scandalous or unbecoming behaviour, the fact or facts whereon the same is grounded shall be clearly specified."

We deem it proper in this place to give one instance, illustrative of the nice distinction, which should guide members of a court martial in discriminating the degree of guilt of any officer charged with behaving in a scandalous infamous manner. At a general court martial, held at the Cape of Good Hope, May 1801, an officer was tried, charged with "scandalous infamous conduct, unbecoming the

the character of an officer and a gentleman, in having sent a charge of six hundred pounds or thereabouts against Sir George Younge for a horse, which the said officer had declared to be a present from him to Sir George, when governor of the colony of the Cape of Good Hope." Concerning which charge the court martial made a distinction; they acquitted the officer of scandalous infamous behaviour, but considered his conduct nevertheless as unbecoming the character of an officer and a gentleman, for which they adjudged him to be suspended from rank and pay for the space of six calendar months.

The proceedings having been laid before his Majesty, the judge-advocate-general signified to Lieutenant-general Dundas, the commander in chief of his majesty's forces at the Cape, that his majesty, laying out of the case any question touching either the right or the delicacy of the officer's claim to a compensation for the horse, concerning which the difference had arisen, points not within the cognizance of a court martial, considered the adjudication as irregular, in as much as the court had acquitted him of the only imputation which could bring the business as a charge before them, namely, of any scandalous or infamous behaviour in the transaction: his majesty could not, therefore, approve the sentence; at the same time it was signified, his majesty was graciously disposed to attribute the error to the nice feelings of the officers who composed

composed the court martial, which had urged them to mark their dislike of a conduct which appeared to them not decorous.

By section 11. art. 10. a similar punishment is adjudged to be inflicted for the offence therein specified as in the naval article 31 : namely, "every officer who shall be convicted before a general court martial of having signed a false certificate, relating to the absence of either officer, non-commissioned officer, or private soldier, shall be cashiered."

By the mutiny act it is also declared*, that if any officer, soldier, &c. shall be accused of any capital crime, or any offence against the person, estate, or property of any of his majesty's subjects, which is punishable by the known laws of the land, the commanding officers of all regiments, troops, or parties, are required to use their utmost endeavour to deliver over such accused person to the civil magistrate, and to assist the officers of justice in apprehending such offender. Every such officer so offending, and being convicted thereof before any two or more justices of the peace for the county where the fact is committed, by the oath of two credible witnesses, shall be deemed and taken to be *ipso facto* cashiered, and shall be declared incapable of holding any civil or military office within the kingdom. By another section it is provided, that

* Mutiny Act (1804), section 14.

no person who is acquitted or convicted of any capital crimes or offences by the civil magistrate shall be liable to be punished by a court martial for the same, otherwise than by *cashiering* *.

This last proviso has been very judiciously introduced with a view of preserving the military character unfulled. But it does not thence follow, that every officer tried, and who may be acquitted or convicted before a civil court of judicature, is liable, in all cases, to be tried a second time by a court martial for the same offence. It is only under peculiar circumstances of the offence being attended with scandalous actions or conduct, derogatory to the military profession, that would render him liable to be tried for the same offence, even after acquittal or conviction by the civil court. Thus, if an officer tried for having killed another in a duel, had been convicted of manslaughter, and in the evidence before the civil court nothing tended to criminate his conduct as an officer or gentleman, or that the affair had arisen from great provocation, and from sudden heat or passion, there could be no reasonable grounds for trying him a second time by a court martial. But should it have appeared in evidence against him, that the tenor of his conduct which led to the fatal act had been such as was derogatory to the character of an officer and gentleman,

* Mutiny Act (1804), section 15.

that

that it was principally occasioned by acts of provocation on his part, and that he was of a notorious turbulent and quarrelsome disposition; in such case a general court martial might take cognizance of such scandalous and improper conduct, and if found guilty, he would, according to the literal import and meaning of the above section of the mutiny act, be cashiered or dismissed his majesty's service*.

The mutiny act also, in some instances, inflicts a penalty on some offences, in addition to the punishment of cashiering, or dismissal from his majesty's service. Thus, by section 30. if any person do make, or give, or procure to be made or given, any false or untrue certificate, whereby to excuse any soldier for his absence from any muster, or any other service which he ought to attend or perform, upon pretence of being employed on some other duty of the regiment, or of sickness, being in prison, or on furlough, every such person shall, for every such offence, forfeit the sum of fifty pounds, and shall be forthwith cashiered and displaced from his office, and shall be thereby utterly disabled to

* It is also provided by the 16th section of the mutiny act, "that no officer or soldier, having been convicted in the ordinary course of law of any criminal offence, shall, while under confinement in consequence thereof, be entitled to any part of his pay, from the day on which such conviction shall have taken place, nor until the day of his return to the regiment, troop, or company, to which he shall belong."

have or hold any military office or employment within this realm, or in his majesty's service.

Section 32. mutiny act, it is enacted, that if any officer or commissary shall muster any person by a wrong name knowingly, upon conviction thereof before a general court martial he shall suffer such penalties and in such manner as is directed and inflicted upon those who shall make false musters. Section 33. Persons offering themselves to be falsely mustered may be committed by a justice of peace to the house of correction, there to remain for the space of ten days; and any horse lent or furnished to be mustered, which shall not belong to the trooper or troop so mustered, shall be forfeited to the informer, if the same doth belong to the person lending or furnishing the said horse; or otherwise the lender shall forfeit the sum of twenty pounds, and if not paid within four days after such conviction, then he shall be committed to the common gaol for the space of three months, or the justice of peace, in his discretion, may cause him to be publicly whipped. Section 34. The deputy or deputies of the commissary-general in Great Britain to make regular returns in the manner prescribed, upon pain of forfeiting their respective employments, and the sum of twenty pounds to any person that will sue for the same for every such offence. Section 76. Every officer, storekeeper, or commissary embezzling or misapplying provisions, forage, arms, clothing, ammunition, or other military stores, shall

shall be dismissed his majesty's service, and forfeit the sum of one hundred pounds, and to make good, at his own expence, the loss and damage thereby sustained.

In the military articles of war there are inferior punishments directed to be inflicted by a court martial when the offences are of a trivial nature, and not attended with aggravating circumstances. Thus by section 1. art. 1. all officers and soldiers, not having just impediment, shall diligently frequent divine service and sermon in the places appointed for the assembling of the regiment, troop, or company to which they belong; such as wilfully absent themselves, or, being present, behave indecently or irreverently shall, if commissioned officers, be brought before a court martial, there to be publicly and severely reprimanded by the president. If non-commissioned officers or soldiers, every person so offending shall, for the first offence, forfeit twelve pence, to be deducted out of his next pay; for the second offence he shall not only forfeit twelve pence, but be laid in irons for twelve hours; and for every like offence shall suffer and pay in like manner: which money, so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs. Art. 2. whatever officer, non-commissioned officer, or soldier, shall use any unlawful oath or execration, shall incur the penalties expressed in the first article. Art. 3. Whoever shall presume to speak against any
known

known article of the Christian faith shall be delivered over to the civil magistrate to be proceeded against according to law.

By section 7. art. 1. no officer, non-commissioned officer, or soldier, shall use any reproachful or provoking speeches or gestures to another upon pain, if an officer, of being put in arrest (or if a non-commissioned officer or a soldier, imprisoned), and of asking pardon of the party offended, in the presence of his commanding officer. Section 9. art. 3. The commanding officer of every regiment, troop, company, or detachment, shall, upon their first coming to any city, town, or village, where they are to remain in quarters, cause public notice to be made against giving credit to any soldiers beyond their pay; and the said commanding officer refusing or neglecting so to do, shall be suspended for three months; during which time his whole pay shall be applied to the discharging of such debts as shall have been contracted by the non-commissioned officers or soldiers under his command beyond the amount of their daily subsistence. If there be any overplus remaining, it may be returned to him.

Section 24. art. 5. directs the rules and articles to be read and published once in every two months, at the head of every regiment, troop, or company, mustered, or to be mustered, in his majesty's service.

No person convicted of any offence can be imprisoned for a longer term than two years, by the sentence of any naval court martial *. Prior to the period of passing the act 22 Geo. II. it was usual for courts martial to adjudge persons convicted of offences, to be imprisoned for ten or fifteen years †, and sometimes even for life, as was the case with the master of the *Northumberland*, who was sentenced to be imprisoned in the Marshalsea for life, for having, in action, ordered the colours to be struck without orders ‡.

If the charge proved against a prisoner should fall under any of those articles of war, in which the punishment of death is expressly annexed, without any alternative or deviation, under circumstances however alleviating, no further questions or deliberations of the court are necessary to impede pronouncing the awful judgment incurred ||. The judge-

* Vide Abstract of Sections of Act of Parliament, 22 Geo. II. c. 33. Appendix, No. II.

† The Case of Lieut. Frye, of the Marines, and others. Appendix, No. XIII.

‡ In May 1744, the *Northumberland* engaged two ships, one of 68, and the other of 60 guns; and when Captain Watson was mortally wounded, the master gave orders to strike before any of the lieutenants could get on the quarter deck to assume the command. All the officers were acquitted except the master. *Beatson's Naval and Military Memoirs*, vol. i. p. 214.

|| In the army the sentences of general courts martial are not final, like those of the navy, neither are they pronounced *instantly*

judge-advocate draws up the sentence ; the prisoner and audience are admitted ; judgment is pronounced in open court †, which is immediately afterwards dissolved.

In order to give greater energy to a sentence of death, it might be proper, at all times, to express in the body of it, the article of war applicable to the crime or offence proved against the prisoner ; and in such case it would be necessary, in adjudging the punishment, to attend to the strict letter of the article.

From the refined constructions of law liable to be put upon the penal statutes in favour of life, we have a very recent instance of a person's escaping punishment, though, perhaps, deservedly adjudged, by sentence of a court martial, to suffer death. This was the case of Peter Finley, late boatswain of the *Ferret*, who had been ordered, pursuant to the sentence of a court martial, to serve as a seaman on board the *Iphigenia* ; but on his returning on board the *Ferret* for his cloaths, he stabbed Mr. Bruton,

Santer in open court ; for the members are sworn not to divulge the sentence of the court, nor shall it be put in execution until after a report shall have been made of the whole proceedings, and until it shall be approved of by his majesty, or by some person authorized, under the king's sign manual, to confirm the same ; and directions shall have been signified thereupon. *Military Articles* (1804), sect. 16. art. 14.

* Vide general printed Inst. art. 8.

the master's mate, with a long knife or dirk. For this offence he was brought to trial, and adjudged, by sentence of a court martial, to suffer death.

The lords commissioners of the admiralty having their doubts, whether the person stabbed by the prisoner was *his* superior officer, and within the spirit, true intent and meaning of the 22d article of war, notwithstanding the parties belonged to different ships at the time the offence was committed, deemed it expedient to lay the case before counsel * for his opinion, and whether the sentence passed upon the prisoner might with propriety be carried into execution.

The 22d article of war ordains, that "if any officer, mariner, soldier, or other person in the fleet, *shall strike any of his superior officers*, or draw, or offer to draw, or lift up any weapon against him, *being in the execution of his office*, on any pretext whatsoever, every person so offending being convicted of any such offence by the sentence of a court martial, shall suffer death; and if any officer, mariner, soldier, or other person in the fleet, shall presume to quarrel with any of his superior officers, *being in the execution of his office*, or shall disobey any lawful commands of any of *his* superior officers, every such person being convicted of any such offence by the sentence of a court martial,

* Vide Case and Opinion, No. XXXVI. § 1 and 2.

shall

shall suffer death, or such other punishment as shall, according to the nature and degree of his offence, be inflicted upon him by the sentence of a court martial." The foregoing article, together with a reference to the 23d and 36th articles of war, and the minutes of proceedings at the trial, were laid before counsel, in order to enable him to give his opinion on Finley's case.

Mr. Cust, the counsel for the affairs of the admiralty and navy, in his opinion observes, that the rule of law that penal statutes are not to be extended by equity is so general, and the cases in which judges have scrupulously adhered to the strict letter of such statutes in favour of life, are so numerous that, from what appears in the title of the minutes and the charge, as stated in the sentence of the court martial, he was of opinion, that Mr. Bruton was not the prisoner's superior officer in the execution of his office, according to the strict letter of the 22d article of war, and that he would not be considered as coming within that description in a court of law: but Mr. Cust did not conceive it possible to form any judgment on the latter part of the question; namely, *whether the said sentence passed upon Finley might with propriety be carried into execution?* as the sentence of the court martial did not specify on what articles of war the adjudication was founded. He further remarks, that there is no article applicable to the present case,

in which the punishment of death is expressly mentioned, but the 22d. And there are only two other articles which can by any construction be applied to this case: the 23d article, if applicable to it, authorises such punishment as the offence shall deserve, and the court martial might be well warranted in an opinion, that the prisoner's offence deserved the *ultimum supplicium*, but he knew no instance in which a discretionary power has been exercised to that extent, *where the offence was not capital by the common law, or made so by act of parliament*. He adds, that the prisoner's offence is certainly of such a nature as to deserve the severest punishment which is authorised by law: it is what the parliament have particularly taken notice of, and passed an act to prevent, by 1 James I. chap. 8. commonly known by the title of the Statute of Stabbing, but they did not make it capital unless the person stabbed should die within six months. The 36th article of war comprehends generally all other offences not capital, and refers to the usage at sea, but no precedent is shewn, nor is it likely that there should be any, that a capital punishment has been adjudged for an offence not capital. There were, therefore, two difficulties in this case, which appeared to Mr. Cust of the greatest importance:

First, the legality of the sentence, which is worthy of the consideration of the highest legal authority.

Secondly,

Secondly, the propriety of carrying the sentence into execution, which, as the grounds of it were not disclosed, must be left to the judgment of those ministers who are properly observed by Mr. Justice Foster to be appointed by the crown for the ends of justice*.

In consequence of this opinion, and the legality of the sentence being questioned, and the case having also been laid before the twelve judges, his majesty was pleased to pardon the offender.

Had the members of the court been aware of the nice distinction made by the learned counsel in this case, the offence clearly proved against Peter Finley would not have escaped with impunity, as it might have been brought under the 23d or 36th article, which, by leaving a discretionary power to the court, would have at least subjected the offender to the severest corporal punishment.

When the majority of the members have given an opinion that the charge has been found proved, and that it falls under any of the articles in which the cases are left discretionary to the court, to inflict the punishment of death, *or such other punishment as the nature and degree of the offence shall be found to deserve*, it is usual to state a second ques-

* See Case and Opinion of Mr. Cust, Ap. No. XXXVI. sect. 1 and 2.

tion to the members of the court, whether or not the punishment to be inflicted is to be capital? or whether a capital or corporal punishment is to be inflicted? If the question only goes to the former, whether the punishment is to be capital? and should this be determined in the negative, another question must necessarily arise, respecting the nature and extent of the punishment to be inflicted, whether corporal, cashiering, mulcting of pay, imprisonment, &c.; or it may be stated in general terms, what punishment other than death shall be inflicted on the prisoner? This being determined, the judge-advocate draws up the sentence*, the court is opened, and all parties are admitted, and judgment pronounced accordingly†.

It is proper to observe, that the members of a naval court martial who have, on the previous question of judgment, voted, that "the prisoner is not guilty," or that "the charge is not proved," are not to be precluded from giving their votes on

* Vide Forms of different Sentences. Appendix, No. XXXIV.

† In drawing up naval sentences of death on home service, it is better not to name any particular ship on board which the prisoner is to suffer, but rather to be left general, on board any of his majesty's ships the lords commissioners of the admiralty, or the commander in chief for the time being, shall think fit to direct; as, in the exigencies of service, great inconveniencies have arisen in naming particular ships that have sailed previous to the arrival of the warrant for execution. See Mr. Corbett's Letter on the subject, Appendix, No. XXXV.

the

the second or third question, which is to decide the degree or nature of the punishment to be inflicted. This principle is consonant with the benignity of our laws in favour of a prisoner, as it is natural to presume, members who are of opinion that he is not guilty of the charge, will use every influence in their power, so far as may arise from the extenuating circumstances of the case, to mitigate by their votes the corporal or other punishment to be inflicted.

At military courts martial discussions have frequently taken place when under the circumstance of collecting the opinions of the members respecting the guilt of the prisoner, and that his conviction should be determined by a bare majority of votes, whether in such case the minority are to be directed by the majority in voting for the punishment to be awarded, or if they can refuse to vote under the plea of not having found the prisoner guilty in the first instance? Although, strictly speaking, such members of a court martial, whose votes have absolved the prisoner of the crime charged, ought not to be called to award any punishment which they cannot consistent with reason or justice do. The question of punishment addresses itself to those members exclusively who have found the prisoner guilty. But it may, perhaps, not be amiss to intimate, that if it should happen that the officers who compose the majority of the court, and who have concurred in the conviction of the prisoner, should
differ

differ in sentiment with respect to the degree of punishment, in such case the prisoner ought to have the benefit of a presumptive opinion of those members who have absolved him thrown into the scale with the votes of those who incline to the *lesser* punishment, for otherwise the prisoner would be put in a worse situation than if those members had deemed him in some degree culpable. This is consonant to equity, and conformable to the practice which has invariably prevailed *.

The punishments which it is in the power of naval and military courts martial to inflict, we have in the preceding pages shewn to be various in their nature and degree. They are from death the greatest and highest, descending in various shades down to mild reprimand and gentle admonition; and by way of illustration to this subject, and conveying to the mind of the reader an interesting scale of crimes and punishments, we have exhibited, at the end of this work, a chronological list of the principal trials at naval courts martial under the existing laws, specifying the nature of the crimes, how the charges have been proved, and the punishments which have been adjudged to be inflicted by the sentences of courts martial. There we find, according to the nature and degree of the offences, various punishments from the highest order to the

* See Judge-advocate-general's Opinion, Appendix, No. LXV. to query 3.

lowest: namely, death; corporal punishment from twelve to one thousand lashes, on the bare back, with a cat o' nine tails; running the gauntlet*; degradation of rank, and being ignominiously towed from a ship to the shore, with a halter round the offender's neck; degradation of rank, and to serve on board of any ship in a subordinate situation, or as a common seaman†; imprisonment; dismissal from

* On the 12th October, 1762, John Bryan, J. Johnson, and J. Brown, seamen belonging to the Ocean, were tried for feloniously stealing a purse of money belonging to a man in the ship, the first named was adjudged to run the gauntlet on board the said ship one round; the second named thrice, and the last four times. See *Chronological List of Trials*.

† Instances of degradation: 10th October, 1755, Thomas Fuller, a midshipman of the Chichester, was tried for great misbehaviour to the lieutenant when in search of deserters, and adjudged to be degraded from the station of a midshipman, rendered incapable of receiving any preferment, and to be towed, standing up, in a boat, with his hands tied up to the sheers, and his sentence read along side of each ship in the harbour. On the 23d July, 1759, William Wright, surgeon's first mate, and Charles Gordon, surgeon's second mate, of the Elizabeth, were tried for contemptuous behaviour to the lieutenant and disobedience of orders, and were adjudged to be dismissed from their employments, and to serve as *common seamen before the mast*. On the 29th May, 1760, Robert Powell, master of the Mermaid, was tried for disobeying the captain's orders, and was dismissed from his employment, and turned before the mast. On the 11th December, 1761, Samuel Smith, midshipman, of the Terror, was tried for embezzlement of stores, and was adjudged to forfeit all his pay for that ship, and to be drummed through the fleet with his hands seized on a gallows, and afterwards to serve before the mast. On the
24th

from his majesty's naval service, and for ever rendered incapable of serving his majesty, his heirs or successors, in any military or civil capacity: dismissal from his majesty's service, without expressing incapacity of serving; dismissal from the ship to which the offender (if an officer) belonged, sometimes with the addition of being degraded, and put on the bottom of the list of officers in which he ranks; the mulcting of pay; suspension of rank and pay for a limited time; severe or moderate reprimand and admonition, the lowest shades of punishment.

In the navy we have very few instances of commissioned officers being degraded in rank, and reduced by the sentence of a court martial to serve in inferior situations, but we find repeated instances of warrant officers, not only degraded and reduced to serve in subordinate situations, but also adjudged to receive corporal punishments*.

24th March, 1762, Solomon Spanton, master of the Fowey, was tried for drunkenness, mutiny, and neglect of duty, and was adjudged to be dismissed as master, to serve before the mast, and for ever rendered incapable of serving as an officer in his majesty's navy. On the 15th January, 1789, Lieutenant Charles Thackeray, of the Thorn sloop, was tried for disrespectful and contemptuous behaviour to his captain, and calling him scoundrel and liar. He was broke from the rank of lieutenant, and adjudged to serve as a midshipman. See *Chronological List of Trials for a variety of other instances*.

* See *Chronological List of Trials*, and some instances given in the preceding note.

In

In the army, by article 17. sect. 16. it is provided, that no court martial shall have authority by their sentence to award corporal punishment, in any case of a warrant officer; nor shall a warrant officer be liable to be reduced, by the sentence of either a general or detachment court martial, to serve in an inferior situation, unless he shall have been originally enlisted as a private soldier, and shall have continued in the service, until his appointment to be an officer by warrant.

Having in the preceding volume, p. 156. noticed, that a captain in the navy cannot degrade a serjeant or corporal of marines, without the concurrence of the officer commanding the detachment, we find additional energy given to this opinion by the marine regulations and instructions, established the 19th July 1804, which ordain in article 9. that “no serjeant or corporal shall be disgraced by the captain of the ship, without directions from the board of admiralty, if the ship is upon home service, or the concurrence of the marine officer, commanding the detachment, in case the ship is abroad *.”

* It would be desirable for the further government of captains in the navy to have the regulations and instructions relating to royal marines serving on board his majesty's ships. bound up as an appendix to the general printed instructions issued by the admiralty.

Although the naval articles do not expressly authorise a court martial to adjudge for any offence, a commissioned or warrant officer to be degraded in his rank, and reduced to serve in an inferior situation ; yet, as there is a discretionary power to inflict punishment for most offences not capital, and no particular restriction made in that respect, as to the degradation of officers or otherwise, the legality of such sentence cannot surely be questioned. However severe such discretionary punishments may be deemed, they are sanctioned by the 36th article of war, which ordains, that “all other crimes, not capital, committed by any person or persons in the fleet, which are not mentioned in this act, or for which no punishment is hereby directed to be inflicted, shall be punished according to the laws and customs in such cases used at sea.”

Were the doctrine to be admitted, that a naval court martial could not reduce a commissioned, as well as a warrant officer, to serve in an inferior situation, the power of the court to inflict any other punishment than what is expressly authorized by the articles of war, might at all times be disputed ; and the thirty-sixth article would be rendered nugatory, and of no avail whatever. Hence, on similar principles, the various punishments which we find to have been from time to time inflicted, [at the discretion of a court martial for the last fifty years, might have been called in question, and deemed arbitrary and

and illegal, because such punishments are not particularly specified in any article of war.

In examining the chronological list of crimes and punishments annexed, it cannot escape the reader's attention, that in the early times (more than half a century ago) when the present laws regulating courts martial were enacted, punishments were more *severe* and *certain* than in recent times. It was not then uncommon for an offender, guilty of desertion, to be adjudged to suffer death, or to be punished with five hundred lashes *; and for the crime of mutiny both the principals and accessories were invariably punished with death. How far a further relaxation of discipline will tend to the benefit of the service, or the advantage of the country, is a question extremely problematical, and does not fall within the limits of this undertaking to discuss; the solution of which is therefore left to naval and military men of the ancient and modern schools, who, from their wisdom and experience, may be fully competent to judge the question in all its bearings. If we trace these enquiries to more remote periods of our military laws and punishments, we shall find the utmost degree of severity

* There is, however, one instance in modern times of a severe sentence for desertion, viz. on the 24th May, 1780. John Webber, boatswain, and James Knight, captain's clerk, of the *Blast*, were both adjudged to be hanged for this offence. See *Chronological List of Trials*.

was occasionally exercised in punishing transgressors, and acts of the greatest ignominy resorted to. We have a striking instance, illustrative of this topic, so far back as the year 1655, when a descent was made upon the island of Hispaniola, and the chief port of Saint Domingo was attacked by the fleet and army commanded by Admiral Pen * and General Venables. The advanced body of the British army being commanded by the Adjutant-general Jackson, who, very soon after he formed his party, was met and attacked by the Spaniards; he immediately ran away, and was followed in great disorder and precipitation by his troops, and which was the principal cause of the failure of this conjunct expedition.

Before the forces were embarked, the adjutant-general was tried at a court martial, and was not only sentenced to be cashiered, and his sword broken over his head, but also adjudged to do the duty of a swabber, in keeping clean the hospital ship of the fleet: a punishment (Burchet observes) suitable to his notorious cowardice †.

The descent on Jamaica was, however, better managed afterwards; for General Venables issued

* Admiral Pen had been two years before vice-admiral in the renowned action with the Dutch fleet, commanded by Van Tromp, July, 1653, and conducted himself with great gallantry on that occasion.

† Burchet's Naval Hist. 394.

orders,

orders, that if any man should be found to run away, the next man to him should put him to death, which if he failed to do, he should be liable to the severest punishment by a court martial *. Much about the same period an instance of disinterested discipline occurred by Admiral Blake superseding his brother in the command of his ship for misbehaviour.

Cowardice was punished by the Egyptians with only some marks of infamy, as they considered shame ought to be more terrible than death to military men †.

Among the Spartans, if a soldier quitted his rank he was obliged to remain a certain time standing or leaning on his buckler, in the sight of the whole army. Cowardice, of which examples were extremely rare, subjected a Spartan, who was found

* Burchet's Naval Hist. 394. Heath's Chronicle, 372. In the year 1748, Captain Ruffane, of the Marines, was tried for misbehaviour and cowardice on board the Lion, in her engagement with a French man of war. He was found guilty, and accordingly received sentence of death. Another instance of the severity and impartiality of naval courts martial was the case of Mr. Phillips, Lieutenant of the Anglesea man of war, which was taken by a French privateer. The captain being killed at the beginning of the engagement, the command, in course, devolved upon the lieutenant, who struck to the French ship, in a most scandalous manner; he was adjudged to suffer death, and was accordingly executed.

† Millot's An. Hist. v. i. p. 31.

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guilty

guilty of it, to all the horrors of infamy. He could not aspire to any office; if he was married, no family would contract an alliance with his, and if he was not, he could marry into none. It seemed as if his pollution was supposed to contaminate all his posterity*. The Spartan discipline was proverbial among cotemporary nations, and a great general and historian declares, that when he considered the discipline of the Spartans all other nations appeared but children in the art of war. Their military laws and regulations embraced every possible case and operation, from the most important down to the most trifling and minute. Proper officers were appointed to receive the prisoners taken in war, to divide the spoil, and to decide the contested prizes of honour and valour†.

Neither the naval nor military articles prescribe the mode of inflicting the punishment of *death*. It is the usage in the *navy* to adjudge an admiral or officer of rank to be shot for a capital offence. There are some instances of sentences adjudging captains and lieutenants to be shot, and others adjudging them to be hanged. In the *army* it is the general practice to adjudge officers or soldiers, found guilty of capital offences, to be shot; but for *deserting to the enemy, or for theft*, a soldier is usually

* Anacharsis's Travels, vol. iv. p. 224. Plut. in Ages, vol. i. p. 612.

† Xenophon de Repub. Spart.

sentenced

sentenced to be hanged, as the most ignominious mode of punishment that can be inflicted.

There are punishments frequently inflicted in the navy, at the discretion of a captain or commanding officer, which the usage of the service only appears to authorize. Among these may be classed the punishment of *running the gauntlet*, *keel-hauling*, *ducking*, *mast-heading*, and seizing the offender by his arms and legs to the shrouds, and there leaving him for hours, as is vulgarly called, like a *spread eagle*.

Gauntlope, pronounced *gauntlet* *, is a military punishment for felony, or some other heinous offence, and which is known to most nations in Europe. In the navy it is usually inflicted on incorrigible delinquents, detected in *robberies*, *theft*, or other scandalous practices. Such crimes naturally exciting an abhorrence and antipathy among the seamen, the delinquent is left to their voluntary flagellation, and which is usually attended with more severity, than had the culprit been tried for his offence by a court martial. We can trace only one instance on record, where the punishment of *running the gauntlet* has been adjudged by the sentence of a naval court martial †.

* *Gauntlope* is derived from *gant*, all, and *loopen*, to run, Dutch.

† The instance alluded to occurred the 12th October, 1762. See *Chronological List of Trials*.

The punishment is inflicted in the following manner:—The whole ship's crew is ranged in two rows, standing face to face on both sides of the deck, so as to form a line, whereby to go *forward*, on one side, and return *aft* on the other; each person being furnished with a small twisted cord, or spun-yarn, called a *knittle*, having two or three knots upon it. The delinquent is then stripped naked, above the waist, and compelled to march forward, in ordinary or quick time, between the two rows of men, and aft on the other side a certain number of times, rarely exceeding three, during which every person gives him a stripe with his *knittle* as he passes along. Although the punishment be termed *running the gauntlet*, yet in the navy the delinquent is never permitted to *run* between the ranks of his executioners, because it is usual to compel him to march in ordinary or quick time, preceded by the master at arms with a drawn sword pointed in the rear towards him, while the corporal follows him behind at a proper distance with another drawn sword; or, instead of the corporal, it is sometimes usual to cause the boatswain's mate to follow him, furnished with a cat of nine tails, but he never applies the lash of it in the march, unless the offender retrograde.

In the army, when a soldier is sentenced to run the gauntlet, the regiment is drawn up in two ranks facing each other; each soldier, having a switch in
his

his hand, lashes the criminal as he runs along naked from the waist upwards. While he runs, the drums beat at each end of the ranks. Sometimes he runs three, five, or seven times, according to the nature of the offence. The major is on horseback, and takes care that each foldier does his duty *.

Neither the punishment of flogging, nor that of running the gauntlet, are so severe in the army as in the navy. One dozen of lashes applied to the bare back by a boatswain's mate, furnished with a naval cat of nine tails, is equivalent to at least fifty lashes, laid on by a drummer with a military cat. This arises, not so much from the expertness of one executioner over another in the mode of laying on his lashes, but chiefly from the comparative thickness, hardness, and severity of the one instrument of punishment over the other.

The inquisitive mind may be apt to inquire, whence does this difference of severity in the punishment with a naval cat of nine tails arise? The answer is obvious, when we reflect that no inferior courts martial, analogous to regimental ones, are admitted in the navy, and that a captain or commander of any of his majesty's ships is restricted by the printed instructions from inflicting any more

* This punishment has of late years been disused in the army.

than twelve lashes upon the bare back of a seaman for any minor offence ; but if the fault should deserve a greater punishment, he is directed to apply for a court martial *. Hence it has been the ancient practice and usage in the *navy*, for commanders to have the cat of nine tails made of cord of a certain weight and texture, that the same force or power applied to one lash, is equal to four of the common cat used in the *army*.

We can trace no instance on record of the punishment of *keel-hauling* having been adjudged by the sentence of a naval court martial, and we have reason to believe that, of late years, commanders seldom or ever inflict it at their discretion, as was formerly practised on board his majesty's ships. This punishment was frequently resorted to in the navy as well as in the merchant service at the early periods after the Revolution (1688), and it appears to have been borrowed from the Dutch navy, where it is practised at the present day. It is executed by plunging the delinquent repeatedly under the ship's bottom on one side, and hoisting him up on the other, after having passed under the keel. The blocks or pullies by which he is suspended, are fastened to the opposite extremities of the main yard, and a weight of lead or iron is hung upon his legs to sink him to a competent depth. By this

* See 4th article of the General printed Instructions, and vol. i. page 150 of this work.

apparatus he is drawn close up to the yard-arm, and thence let fall suddenly into the sea ; where, passing under the ship's bottom, he is hoisted up on the opposite side of the ship. And this, after sufficient intervals of breathing, is repeated two or three times.

Ducking is a sort of marine punishment, but now seldom inflicted in the navy, for uncleanness, blasphemy, or scandalous actions.

The French inflict it on those who have been convicted of desertion, blasphemy, or exciting sedition. It is performed as follows, and is similar to the mode we have adopted :—The criminal is placed astride of a short thick batten, fastened to the end of a rope, which passes through a block hanging at one of the yard-arms. Thus fixed, he is hoisted suddenly up to the yard, and the rope being slackened at once, he is allowed to fall into the sea. This chastisement is repeated several times, and by having double-headed shot fastened to his feet during the punishment, he sinks a considerable depth before he is hoisted up again.

The punishment of *mast-heading* is frequently inflicted on young midshipmen, at the discretion of the captain or commanding officer, for misconduct, neglect of duty, or trivial offences ; and we have already given the case of Leonard, a midshipman,

and Lieutenant Shields, decided in the Court of Common Pleas, March 1792 *. With respect to this case we have only further to remark, that the commanding officer of the Saturn, Lieutenant Shields, having for some misconduct of the midshipman ordered him, by way of punishment, to the mast-head, which he refused to obey, and was thereupon forcibly hoisted up to the mast-head. Mr. Leonard brought an action for an assault and violence to his person, but the learned judge, Loughborough, expatiated on the danger of disobeying an order, sanctioned by the usage of the service as a punishment, and that the measures adopted to enforce such punishment were justifiable. The jury, therefore, without hesitation, gave a verdict for the defendant.

It is a melancholy truth to observe, on a perusal of court martial records, the many instances of trials for offences of a flagrant nature, which, after the most mature investigation, appear unsubstantiated by proof. In such cases it is usual for courts to mark their judgments of acquittal, in terms deprecating the prosecutor's conduct by adjudging the charges to be *malicious, vexatious, and without any foundation*.

In the Chronological List of Trials annexed to this work, we have principally selected those

* Vol. i. p. 159. *Note*.

in which the charges have been proved, and proportionate punishments adjudged; with a view of exhibiting the extent and variety of crimes and punishments. Had all the trials by naval courts martial been inserted wherein the charges were not substantiated, it would have swelled the list beyond the limits prescribed, and might have been deemed an object of no great utility.

In strict justice to those persons who may be placed in the painful situations of prosecutor and prisoner, the court, in adjudging a sentence of acquittal, attended with aggravating circumstances of malice and vexation on the part of a prosecutor, ought not to make any difference in marking their disapprobation of his conduct, whether he be a superior or inferior officer. There are some instances on record of superior officers who have brought inferiors to trial for charges that have been adjudged *cruel, malicious, vexatious, and without any foundation*. There are also many instances where the prosecutors have brought superior officers to trial, and the sentences of acquittal have adjudged the charges to have been *malicious, vexatious, and ill-founded*. But there is no instance of a charge brought by an inferior officer against a superior, being marked in the sentence of acquittal with the word *cruel*.

Those

Those members of a court martial who think that a superior officer's feelings should not be mortified by such strong modes of expressions, in a sentence acquitting an inferior of a crime that might have affected his life, deceive themselves, and do not administer justice as they have sworn to do *according to their consciences, to the best of their understandings, and the custom of the navy, in like cases.* When a false accusation has been brought before the tribunal of a court martial by a superior officer against an inferior, which, had it been substantiated, might have either affected his life, rendered him incapable of serving his majesty, or for ever destroyed his reputation as an officer and a gentleman, we are decidedly of opinion, that the sentence of acquittal, in justice to the injured individual, ought to bear stronger marks of the court's disapprobation of the prosecutor's conduct, than if an inferior, under similar circumstances had tried his superior; because the one, as superior officer, had a greater latitude in exercising malicious and vexatious acts in bringing the inferior to trial, and which, from the circumstances of long arrest or suspension from duty, previous to trial, might also very justly be deemed an act of *cruelty* to an innocent sufferer.

Many instances might be cited to give energy to the opinion we have given, of the expediency and justice of a court martial marking in the sentence
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the *malicious* and *vexatious* conduct of a superior officer, in the capacity of prosecutor, when he has not been able to substantiate heavy charges brought against the inferior tried: it will therefore suffice, after the comments already made, to notice one case in point*. Richard Fynmore, lieutenant of marines, on board the Buckingham, was tried on the 4th October, 1771, on charges exhibited against him by Captain James Titchborne, commanding the detachment of marines on board the said ship, for behaving unlike an officer and a gentleman, in receiving blows from Lieutenant Dennis, of the marine corps, and refusing to fight him.—The sentence of the court martial adjudged Lieutenant Fynmore to be severely reprimanded, as falling under the 23d article of war, but in regard to the other charges, the court adjudged them to be *malicious, and that Captain Titchborne, the prosecutor, was much more culpable than the prisoner.*

The captain was tried on the following day (5th October 1771), for treating Lieutenant Fynmore, with frequent abuse and unofficer-like conduct. The court found the charges proved, and he was dismissed from his majesty's service, as falling under the 22d and 23d articles of war; but, in consideration of his age and infirmities, he was recommended to the favour of the lords commissioners of the admiralty.

* See *Chronological List of Trials.*

It is curious to remark, that Lieutenant Dennis, of marines, belonging to the said ship Buckingham, was soon after tried by a court martial (3d April, 1772), for behaving to Captain Curry in an insolent, threatening, and mutinous manner, and the sentence of the court adjudged him unworthy of further preferment*.

It has been noticed in the former volume, that by the military articles of war there is some degree of check to ill-founded accusations in appealing from a regimental to a general court martial; for, if upon this second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said court martial. On similar principles of justice, his majesty, in the exercise of his royal prerogative, frequently dismisses from his service prosecutors who may have failed in the first instance to substantiate heavy charges brought before a general court martial; and more especially if the members of court have marked in the sentence their disapprobation of his conduct, by declaring the charges *vexatious, frivolous, or ill-founded*.

* See *Chronological List of Trials*.

CHAP. VI.

Of the remitting of Punishments, Pardon, and Execution.

HAVING, in the preceding chapter, arrived at the last stage of the proceedings of courts martial, which we have endeavoured to trace by progressive steps, in as brief a manner as the arrangement of documents and materials would admit, it might, strictly speaking, have seemed highly proper, in this place, to have concluded these enquiries. But as it may not be deemed extraneous matter, we cannot yet dismiss the subject, without offering a few observations on the steps usually taken, and the proceedings that occur, in one shape or other, in the awful interval between pronouncing of judgment and execution, the completion of human punishment.

Law (says an able writer*) cannot be framed on principles of compassion to guilt; yet justice, by the constitution of England, is bound to be administered in mercy. This is promised by the king in his coronation oath; and it is that act of

* Law of Forfeitures, p. 99.

government which is the most personal, and the most entirely his own.

When we reflect, however, that mercy to the *guilty* is cruelty to the *innocent*, and oppose to the emotions of compassion which we naturally feel for a particular person, a more extended compassion which we ought to feel for mankind, our minds become reconciled to the necessity of making frequent examples by inflicting the punishment incurred by law.

The extending of mercy where his Majesty thinks it is deserved, and thus softening or mitigating the rigour of the law in such criminal cases as have been recommended to royal clemency, and that merits an exemption from punishment, is unquestionably one of the most amiable prerogatives of sovereignty.

Sir William Blackstone, on the subject of pardons, emphatically observes, "That in monarchies, the king acts in a superior sphere to the magistrates of democracies, and though he regulates the whole government as the first mover, yet he does not appear in any of the invidious parts of it. Whenever the nation sees him personally engaged, it is only in works of legislature, magnificence, or compassion." To him, therefore, the people look up as to the fountain of honour, bounty, and grace.

And

And these repeated acts of goodness, coming immediately from his own hand, endear the sovereign to his subjects, and contribute more than any thing to root in their hearts that genial affection and personal loyalty, which are the sure and most solid establishment of a prince.

A reprieve, in a strict legal sense, is only a temporary suspension of the execution; and there may be many causes to render it expedient. The cause of a regular reprieve may originate from the offenders being *non compos* between the judgment and the award of execution*; for regularly, as has been in a former part of this work already observed†, though a man may be *compos* when he commits a capital crime, yet if he becomes *non compos* after the commission, he shall not be convicted; if, after having been found guilty, or convicted, he shall not receive judgment; and if after pronouncing judgment, he shall not be ordered for execution: for, “*furiosus solo furore punitur*;” and the clemency of the law knows not but he might have offered some reason, if in his senses, to have stayed or altered the subsequent proceedings.

A *pardon* is permanent, and the king may extend his mercy upon conditional terms, and which constitutes the validity of such pardon.—*Reprieve*

* 1 Hale's Pleas of the Crown, 370.

† Vol. II. ch. iii.

and *pardon*, in the general acceptation, are now considered as synonymous terms, though in a legal sense they differ in the manner we have just mentioned. All pardons must be under the great seal, and when extended to a criminal, tried by a naval court martial, are sent to the lords commissioners of the admiralty, who immediately transmit as secret their order of reprieve or pardon to the commander in chief, or senior officer at the place for the time being, where the execution would have taken place, signed by the lords, under the admiralty seal, signifying his majesty's royal mercy, and directing the commander in chief to keep the whole of the order *extremely secret*, until the offender is, on the day appointed for execution, brought upon deck, and every thing prepared for his execution, agreeably to the custom of the navy; and *then only* to make known to him his majesty's pleasure, and to release him from his confinement *.

Corporal punishments in the navy are frequently remitted by the admiralty at home, or commanders in chief on foreign stations, when the offender has been recommended to mercy, and that the circumstances attending his guilt merit compassion †.

In carrying the sentences of naval courts martial for corporal punishment into execution, the ad-

* Vide Admiralty Form of Reprieve and Pardon, Appendix, No. XXXVII.

† Vide Order to remit Punishment, App. No. XXXVIII.
miral,

miral, or commanding officer of the ships and vessels for the time being is to issue orders to the captain of the flag, or other particular ship, to make the signal for the boats of the squadron to assemble, manned and armed, on the day appointed, to attend the punishment; and likewise orders to the other captains to send a lieutenant with a boat, manned and armed, from their respective ships, to attend and assist thereat *.

An order is at the same time issued, to the captain or commander of the ship to which the prisoner belongs (accompanied with a copy of the sentence), directing him to cause the punishment to be inflicted alongside of the different ships, in the manner, and in such proportions, as therein specified †. It is usual to include in this order, directions to the captain to cause the surgeon of his ship to attend in the boat with the lieutenant, as well as one of his mates in the long boat with the prisoner, for the purpose of judging of the prisoner's ability to bear all his punishment; which the surgeon may put a stop to when he conceives the prisoner is not able to bear any more with safety. This last is sometimes made out as a distinct and separate order ‡, though we deem it more agreeably to form to have it comprised in one.

* Vide Form of Orders to Captain of Flag ship, and Commanders of the other Ships, App. No. XXXIX. sect. 1 and 2.

† Vide Order, Ibid. No. XL. sect. 1. and 2.

‡ Vide Form, Ibid. No. XL. sect. 2.

The provost marshal is ordered to attend the punishment, and to read publicly the sentence of the court martial alongside of each ship respectively *.

When the king is pleased to approve of a sentence of death, the warrant for execution is transmitted by the admiralty to the officer commanding the ships and vessels at the place for the time being, who issues the necessary orders agreeably to the forms of the service †. And in pursuance thereof preparations are made. The fatal morning is arrived—the signal of death is already displayed—the assemblage of boats, manned and armed, surround the ship appointed for the execution. The crews of the respective ships are arranged on deck, and after hearing the articles of war read, await with silent dread and expectation the awful moment. At length a gun is fired (the signal to rouse attention), and at the same instant the unhappy victim, who has violated the laws of his country, is run up by the neck to the yard-arm—a dreadful spectacle of warning to deter others from the commission of similar crimes.

* Vide Orders to Provost Marshal, Appendix, No. XLI. sect. 1.

† Ibid. sect. 2. Warrant of Death, and Orders for carrying it into execution, Ibid. No. XLII, sect. 1, 2, and 3. and No. XLIII. sect. 1 and 2.

Military executions are attended with still more parade and solemnity. In no service or country is the ceremony so awful and impressive. Solemnity, indeed, is requisite for the sake of example; but the pains of death should not be drawn into "lingering sufferance." For what ends detain the excruciated soul upon the verge of eternity? It was consistent only with the savage cruelty of Caligula to order the executioner to protract the death of the mangled criminal, *perpetuo, notoque jam præcepto*, "*Ita fieri, ut se mori sentiat.*"

In Great Britain a military sentence of death being approved by his majesty, the warrant is issued under the sign manual; and on foreign stations the commander in chief issues his warrant to the second in command, and appoints the time and place for carrying the sentence of death into execution *.

In pursuance thereof general orders are issued from the adjutant general's office, arranging in dreadful array the regiments and corps allotted for parade, guards, and execution parties †. Five execution parties, each consisting of a serjeant and

* See Warrants for Military Executions, App. No. LXVI. sect. 1 and 2.

† See General Orders respecting Military Execution, Ibid. No. LXVII.

twelve rank and file are appointed *. The provost marshal is directed to take the command of these five execution parties, on their arrival at the guard. All the guards of the garrison and advanced posts leave their sentries at their respective stations, and repair themselves to the provost marshal's guard, at the hour appointed for the purpose of escorting the prisoner to the place of execution. All these guards, as well as the execution parties, under the immediate direction of the provost marshal, are commanded by the field officer of the day.

The several corps of the line, at the appointed hour and place, parade three deep, and are prepared to draw up so as to form the three sides of a square. The execution parties in divisions, preceded by a band of music, and a corps of drummers with the provost marshal on horseback at their head, march in ordinary time in front of the prisoner. The music plays the Dead March in Saul. The guards, formed in divisions, march at the same time in rear of the prisoner. The main guard, commanded by the captain of the day, leads. The other guards follow in succession, according to the rank of their respective regiments.

* For each prisoner to be executed, it is usual to allot one execution party. In the instance referred to (Appendix, No. LXVII.), there were five soldiers adjudged to be shot, consequently five execution parties were appointed.

The

The procession comes into the square from the rear by the right, and the music and drums of each corps play and beat to the slow march in Saul, as the procession passes along its front. The execution parties march along the front of the whole line, and as far as the coffin placed in the centre, where the three first divisions halt and wheel back on their right pivots in line. The fourth and fifth divisions continue to advance until they can form opposite to the three first, by wheeling back into line on their left pivots. The dreadful moment now approaches—the music ceases—an awful silence ensues—the warrant and sentence of death are audibly read—the signal is given—and the fire of the execution parties puts an immediate end to the prisoner's existence *.

Our feelings are now awakened at the sufferings, although transient, of the guilty individual, and that indignation, which, at other moments, his crimes would have excited, becomes extinguished; but while we pity the dying man we must admit the justice and imperious necessity of his punishment as an atonement for the violation done to the laws of his country, and as a warning to others; the end of all human punishment.

* It is usual for the provost marshal to give the word or signal to the execution parties, the first division of each party taking good aim and firing at its victim, and the second division firing in like manner immediately after as the sufferer falls to the ground, whereby he cannot escape being instantly *shot to death*, conformably to the sentence.

APPENDIX.

No. LI.

Minutes of the Proceedings of a Court Martial to try Captain Powlett, of the Exeter, for bad Conduct in the East Indies, on specific Charges exhibited by Vice-admiral Griffin, and where no Witnesses appeared to substantiate the Charges. Referred to Vol. II. p. 28.

Devonshire, at Chatham, the 1st September, 1752.

PRESENT,

Admiral Townsend, President.

Captains De L'Angle,	Captain Sturton,
Parry,	Hon. Captain Keppel,
Baird,	Captain Pearse.

Captain Powlett appeared in court, and all persons admitted; the order for holding the court read; the court and judge-advocate sworn.

A letter from Mr. Milnes read, with a letter and affidavit from Vice-admiral Griffin, setting forth that he is unable, for want of his witnesses, to proceed this day in making good his charge against Captain Powlett.

All parties were ordered to withdraw, and the Court took the said affidavit into consideration.

As to that part of it which contains a narrative of past transactions, relative to Captain Powlett's trial, it appears much too general and imperfect for the Court to form any judgment thereupon.

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With respect to proceeding upon the trial this day, the Vice-admiral swears, he is not prepared to make good his charge against Captain Powlett, because his most material witnesses to support it are some of them gone abroad, and others not to be procured at this time. That the absent witnesses are such as are absolutely necessary for maintaining the charge, and that he cannot, without the benefit of their testimony (as he is advised and believes) proceed to make it good.

Upon which the Court observe,

That he does not mention the names or number of the absent witnesses, with the points which each of them is absolutely necessary to prove, in order to enable the Court to judge of the absolute necessity of their testimony.

That it does not appear, even by this his own affidavit, that he has taken the proper measures for preventing these necessary witnesses going out of the way, and being absent when the trial should be appointed.

That he does not mention where the absent witnesses are, nor assign any time whatever by which they may probably be present.

That considering the various incidents that may prevent the collecting the absent witnesses together, it does not seem possible that any such time can be assigned.

That, therefore, (since the Admiral positively swears they are absolutely necessary to maintain the charge, and that he cannot, without the benefit of their testimony, proceed to make it good,) there does not seem to be any probable appearance that he can hereafter be more able than at present to proceed to make good his charge.

And upon the whole the Court are unanimously of opinion, that it is not reasonable to put off the trial to a more distant day.

Captain

Captain Powlett and all parties admitted. The foregoing observations and opinion read. The charge against Captain Powlett read. Inquiry was made if any witnesses were in the way to support the charge. None appeared.

Captain Powlett heard as to what he had to offer, and he concluded with saying, that as no proof whatever had been offered in support of any part of the charge, he should not trouble the court with any evidence in his defence.

All parties withdraw; sentence drawn up and signed. All parties re-admitted, and sentence of acquittal pronounced.

(Signed)

CHARLES FEARNE,
Judge-advocate.

No. LII.

General Orders, accompanied with a Letter from the Judge-advocate-general relative to the Sentence, adjudging Lieutenant-colonel Jephson to be suspended from Rank and Pay for six Months. Referred to Vol. I. p. 124.

THE following copy of a letter from the Judge-advocate-general is to be read at the head of every regiment, and entered in the regimental orderly books.

By order of his Royal Highness, the Commander in Chief,

HARRY CALVERT,
Adjutant-General of the Forces.

Horse Guards, 8th Feb. 1804.

Judge-

Judge-advocate-general's Office,

3d February, 1804.

SIR,

HAVING had the honour to lay before the King the proceedings of a general court martial, held at Athlone, in Ireland, on the 28th day of December last, and on subsequent days, when Lieutenant-colonel William Jephson, major of the 17th Regiment of Light Dragoons, was tried and found guilty of having acted in an unwarrantable manner, highly unbecoming an officer, by abusing and ill-treating Assistant-surgeon Samuel Tilt, of the said regiment, on the morning of the 30th October last, and was adjudged to be suspended from rank and pay for the space of six calendar months. I am commanded to acquaint your Royal Highness, that his Majesty, adverting to the detriment which a regiment, as well as the service, must at any time, and more especially in the present juncture, sustain from the circumstance of a field officer being suspended by the sentence of a court martial during so long a period, deems it indispensable, that Lieutenant-colonel Jephson should retire; but in consideration of Lieutenant-colonel Jephson having served upwards of twenty-three years, his Majesty is graciously pleased to permit that he receive the regulated price for his regimental commission from the officer who shall be appointed to succeed him. I shall make communication to Lieutenant-general Lord Cathcart, commander of the forces in Ireland, of the sentence, and of his Majesty's pleasure, in order that the same may be made known to the court martial by which Lieutenant-colonel Jephson was tried, and that the court be dissolved.

I have the honour to be, with dutiful respect, your Royal Highness's most obedient and most humble servant,

CHARLES MORGAN.

*Duke of York, Field Marshal, Commander
in Chief of his Majesty's Forces.*

No. LIII.

Order respecting Officers in the Army put under Arrest by a Commanding Officer abroad, being released by the superior Officer, and ordered to return to his Duty without Trial.
Referred to Vol. I. p. 223.

GENERAL ORDERS.

Horse Guards, 1st February, 1804.

IN consequence of some circumstances which have recently occurred, by which the Commander in Chief conceives the discipline of the army, and the interest of his Majesty's service to be materially affected, his Royal Highness judges it expedient thus publicly to make known his sentiments, that a practice which has obtained in more than one instance, *viz.* commanders on foreign stations sending home officers with articles of accusation pending against them, without the same having been duly investigated, is detrimental to the king's service, and, except in cases of the most urgent necessity, should be avoided, as this measure, though it may relieve the commanders on the spot from some embarrassments, seldom fails to transfer them, with increased difficulties, to head quarters.

His Royal Highness judges it expedient to take this opportunity of controverting an erroneous opinion, that an officer, who has been put under an arrest, has a right, as it is termed, to *demand a court martial upon himself*, and may persist in considering himself as still under the restraint of such arrest, although expressly released therefrom by the superior officer who imposed it; whereas the fact is, that a superior officer is invested with a discretionary power of liberating as well as of arresting, and of requiring that the officer so liberated do return to the
exercise

exercise of his duty as before; neither can an officer insist upon a trial, unless a charge is preferred against him. It by no means follows, that an officer, conceiving himself to have been wrongfully put in arrest, or otherwise aggrieved, is without remedy: a complaint is afterwards open to him, if preferred in a proper manner, for which provision is made by a special article of war.

By order of his Royal Highness, the Commander in Chief.

(Signed)

HARRY CALVERT,
Adjutant-general of the Forces.

No. LIV.

Substance of the Arguments upon the general Necessity and Scope of the Bill brought into Parliament, in 1749, for amending, explaining, and reducing into one Act of Parliament the Laws relating to his Majesty's Navy; containing a Summary of the History and Progress of our Naval Martial Laws. Referred to Vol. I. p. 188.

ARGUMENTS AGAINST THE BILL.

IN all wise governments it is a standing maxim not to make any new law, unless there appears to be a necessity for so doing; and, therefore, with regard to the bill now before us, there are two questions necessary for our consideration; which are, first, whether a new law be necessary for the government of his Majesty's ships and forces by sea? and secondly, whether the bill now before us be such a one as ought to be passed into a law? As to the first question it must be owned, that we have always had a very great regard for the law passed in the 13th of

King Charles II. It was a law concerted by as great men as ever were at the head of affairs in this kingdom; and under that law our navy has been governed for near ninety years, without any complaint, and with more glory, than will be acquired under any law that can be substituted in its room. That law was drawn up by the great Admiral Montague, soon after Earl of Sandwich, who had before shewn himself an excellent officer both by sea and land; and it was approved of by the Lord Chancellor Hyde, the Marquis of Ormond, Denzill Holles, Sir Anthony Ashley Cooper, afterwards Earl of Shaftesbury, and several other great men, who were of the king's council, before it was offered to either house of parliament for their approbation. It was granted that it had some defects, as every human law must have, and laws have since been passed for remedying those defects; but in my opinion none of them have answered the end intended, and those defects were thought so trivial, that both the Dutch wars, in the reign of King Charles II. and the French war, in the reign of King William, as well as that in the reign of Queen Anne, were carried on, and gloriously carried on, without any law for remedying those defects, except that law made in the beginning of King William's reign, which appoints an oath to be taken by the judges in every court martial, and whether such an oath be of any service or no may be doubted; because a man who is so wicked as to resolve to act unjustly, will shew no regard to that or any other oath that can be framed by the legislature.

It was therefore observed, that from the year 1661 to the year 1720, our navy was governed by that law of King Charles II. without any material alteration or amendment; but in the year 1720 we began to think of extending the power of courts martial, and with this view a clause was inserted in an act then passed, by which it
was

was enacted, that seamen, guilty of any of the offences mentioned in the act of the thirteenth of Charles II. upon the shore in any foreign parts, should be tried and punished by a court martial. Now, to determine whether this was an amendment, or the contrary, we must consider that, by the act of King Charles II. the jurisdiction thereby given to courts martial is expressly confined to such of the offences therein mentioned as should be committed upon the main sea, or in vessels hovering in the main stream of great rivers, only beneath the bridges nigh to the sea, within the jurisdiction of the admiralty, and only by persons in service and pay in the fleet, or ships of war. So that if any of those offences had been committed upon the shore, or at land, even in foreign parts, not within the British dominions, the offender was to be brought home and tried by the common law; or if committed in any of our plantations, he was to be tried by the common law courts established in that plantation.

Thus we see how careful the parliament was, in the year 1661, of encroaching upon the liberties of the subject, the chief part of which consists in their being tried, when accused of any crime, by God and their country; that is to say, by an impartial judge, and a jury of their neighbours in the country; and in their not being subjected even to a trial, till a jury of neighbours has found sufficient cause to suspect their being guilty, by finding the bill of indictment against them. And if we consider the circumstances of affairs at that time, we shall have still greater reason to extol the caution of that parliament; for though they, in some cases, shewed too much complaisance to the crown, yet, with respect to the army and navy, their complaisance, even in the honey-moon of the Restoration, was far from being extraordinary.

The court were then pushing for a mutiny bill with regard to the army, but the king's ministers foresaw that

it would be impossible to prevail with that parliament to establish a standing army by law; therefore they compounded the matter, and contented themselves with obtaining this, which is a sort of mutiny bill with regard to the navy, and this they took care to confine in the manner already mentioned.

It was indeed admitted, that with regard to offences committed on shore in foreign parts, not subject to the crown of Great Britain, the bill was too much confined, because such offences ought, I think, to be made triable by a court martial of the squadron to which the offenders belong, and this was the defect which was made the pretence for the law 1720; but our parliament was then grown so very complaisant that they extended the jurisdiction of courts martial to offences committed on shore in any foreign part whatever, by which they have made a most dangerous encroachment upon the civil power in all his majesty's plantations; therefore this may be called an alteration, but it cannot be called an amendment.

From the year 1720 to the year 1745 there was no new law introduced that can properly be called a law, for regulating the government of his majesty's navy; but in that year some gentlemen who had just got into the administration began to be possessed with the spirit of law-giving, which made them discover several defects, never before thought of, in our laws for regulating the government of the navy, and to remedy those defects they cooked up a bill, which was that session passed into a law; but how did they succeed? Why, but last year they were forced to give us a new specimen of their cookery, and to bring in and pass a bill for repealing the law they had made but three years before; and now they have brought in a bill, not only for repealing the law they made last year, but also for repealing all the laws

laws now in being for regulating the government of the navy.

This seems to be no great encouragement for us to accept of any more specimens of their cookery, especially this, which is to destroy what the navy has gloriously subsisted on for many years. If they had confined their bill to the repealing of all the laws made since 1661, for the government of his majesty's navy, we should have consented to it; because every alteration since has made the case worse instead of better. King William's law for appointing an oath to be taken by the judges has only added perjury to injustice; and we should rather choose to have offences, committed on shore in foreign parts, remain unpunished till the offenders could be sent home, than to have the civil power in all our plantations divested of the right to try and punish seamen for offences committed within its jurisdiction. Even that clause in the act of the 8th of the late king against piracy, which subjects the captain of a king's ship to a penalty, who shall receive on board any merchandize, in order to trade with the same, is very unnecessary, because it is in the power of the admiralty to cashier or dismiss any such merchant-captain, with infamy, from the service. And as to the novelties introduced by the law passed last year, every one of them is either useless, or of pernicious consequence.

As to these novelties we shall take notice of some few of them; and first, as to that by which it is enacted, that no commander in chief of any fleet or squadron, or detachment thereof, shall preside at any court martial in foreign parts, we really think it ridiculous. Will you, or can you think the king will ever trust the command of a fleet or squadron to a man who is not fit to be trusted with presiding at a court martial? To pretend that the chief commander, by being president, may influence

fluence the court to do as he pleases, is contrary to experience. We know an instance to the contrary: a chief commander, who was in his nature a little passionate and full of resentment, had appointed a court martial to try a man who had offended him. He was himself president, as by the old law he was of course; and after the fact had been inquired into, and the witnesses on both sides examined, he was going to pronounce it as the unanimous opinion of the court, that the prisoner was guilty; but, after a little pause, one of the captains stood up and said, he hoped the president would not pronounce such a sentence as being the unanimous opinion of the court, for that he was of a contrary opinion; and after he had given his reasons, another stood up, and declared himself of the same opinion; then another; after him a fourth; in short every member present declared against the opinion of their chief commander; so that, instead of being unanimously condemned, the man was almost unanimously acquitted.

This shews that, by the old law, the chief commander of a squadron, though president of the court martial by him appointed, could not influence the court to do whatever he pleased. But by the next novelty we are to take notice of, you have put it in the power of every chief commander of a squadron to have such a court martial as he may influence, without being either president, or having a vote therein; and to shew this, I must observe, that by the old law and custom of the navy, when any of the king's ships had the court martial flag out, not only all the captains of that squadron were obliged to repair on board, and had their seat and vote in that court martial, but every post-captain of a king's ship that happened by accident to come in sight of the court martial flag, was obliged to repair on board, and had his seat and vote in that court martial; a remarkable instance of which hap-

pened in the famous trial of the Lord Torrington, the beginning of King William's reign, which was a trial that no captain would have chosen to be present at, because by acquitting, he was sure of disobliging the king, and by condemning he might probably be guilty of great injustice towards the prisoner. Yet Sir John Norris, who by mere accident came in sight of the Kent frigate at Sheerness, on board of which the court martial was then sitting, and the flag for that purpose out, as soon as he saw that flag out, he was so observant of his duty, that he left his ship, repaired on board the Kent frigate, and was one of those who joined in unanimously acquitting that noble lord, contrary to their own interest, because they thereby ran the risk of being dismissed the service, and never again employed in the navy, at least during that king's reign; which is another instance of its being difficult to obtain any undue influence over courts martial whilst they remained upon the ancient footing; though a late instance has convinced many people that the thing is now absolutely impossible; because, it seems, the officers of our navy, as well as all other ranks of men in the kingdom, are become a little more complaisant to their superiors than was usual in former days.

But if the obtaining of such an influence was not absolutely impossible, even under the ancient regulation, it is made much more easy by the law passed last session, which enacts, that no court martial shall consist of more than nine, or less than five persons, and shall be composed of such commanders there present as are next in seniority to the officer who presides at the court martial; for by this means it must always be before-hand known who are to be the members of the court martial, which will afford an opportunity for undue practices, and methods may be taken to detach intractable captains from the squadron before the court martial be appointed. Then as to the

courts martial in Britain or Ireland, the admiralty is entrusted with a most dangerous power, which is that of directing a flag officer, or captain of any ship of war, who shall be in any port within Great Britain or Ireland, to hold courts martial there, and to preside thereat; and that though there be but two post-captains there besides himself, he being in that case empowered by a following clause to call any two commanders of his majesty's vessels then in that port, under the degree of a post-captain, in order to make a sufficient number to hold a court martial; so that the best officer in the navy may find his life at the mercy of a flag officer or captain, and the commanders of two little sloops sent to that port, on purpose to sacrifice him to the resentment of a minister, whom he may perhaps have offended by a brave and honourable discharge of his duty to his country.

It is of the most dangerous consequence to exclude men of a high rank from presiding or sitting in a court martial, or to empower men of a low rank to preside or sit there; because the lower a man's rank is in the navy, the more he will always be exposed to the influence of an ambitious or revengeful minister; and therefore, if there were no other reason, we should be for repealing the law passed last session for regulating the navy. But there is another novelty introduced by that law, which is the oath to be taken by the members of a court martial. They are not only to swear, that they will duly administer justice, as was prescribed by the law of King William, which was the law passed on purpose for the trial of the Lord Torrington, already mentioned, but they are to swear not to discover any thing that passes in debate relating to the trial; nay, even the judge-advocate is to swear to the same secrecy. How ridiculous is this! how contrary to the whole tenor of our constitution! An oath of secrecy is an oath taken by no court of justice in the world, except

the court of inquisition ; and as that court is, in its own nature, a court of injustice, cruelty, and oppression, we hope it will never be made a precedent for any new regulation here. In this happy country the proceedings of all our courts of justice are open and publicly known ; no judge is afraid or ashamed of the opinion he gives, or of the reasons on which he founds that opinion. Even in the most solemn trials in this house, our proceedings are open to the whole world, and we give our votes in the most public manner. This is the great security for the impartiality and honesty of all our courts of justice ; were it in their power to conceal from the world what they do, or the opinions they give, bribery and corruption would soon be as frequent and have as powerful an effect as it has at any election in the kingdom ; for it has always been, and always will be, the prayer of rogues :

Noctem peccatis, et fraudibus objice nubem.

And this prayer will be effectually answered by this oath of secrecy, especially in our courts martial, which must never consist of a number less than five ; because, let the proceeding or sentence be ever so infamous, no particular member can be charged with it by the people, as every one of them will at least insinuate that he voted against it.

This is another reason why the act of last session ought to be repealed ; and as to the new regulations thereby introduced, relating to ships of war wrecked or taken by the enemy, it was before in the power of the crown to continue the pay to those officers and seamen that had faithfully and diligently done their duty, if not as pay, at least by way of gratuity ; and we do not think the continuance of the pay ought to be established by act of parliament, because the loss of a ship may be owing to some neglect or act of imprudence, which it will be impossible to prove to the satisfaction of a court martial

under no manner of undue influence; therefore, this matter ought to be still left to the discretion of the crown; and we think that when a ship is entirely lost, it ought to be left to the discretion of the crew, whether they will continue under the command of their officers or no; because, if the majority of them approve of the conduct of their officers, they will, for their own safety, compel the rest to agree to it; on the other hand, if a ship should be lost by the ill conduct of the commanding officer, and the lives of the whole crew brought into immediate danger, it is hard, nay, it will be impossible to compel them to submit any longer to his command; and if by mutiny they save their lives, they will of course turn pirates, or enter into foreign service, to prevent their being punished for that mutiny. It is true, a case lately happened, where the greatest part of a crew exposed themselves to greater danger by mutinying against their captain, than they could have done by submitting to the continuance of his command; but this will very seldom happen, and therefore I think the danger on the other side will be much greater and more frequent.

We have now shewn, that if there be any inconsistency in our laws relating to the sea service, it proceeds from the ill-concerted laws that have been made since the year 1661. Several years ago some young gentlemen took it into their heads that a new law was necessary for the amendment of our law in general, and the design became a topic of conversation in all companies; upon which a learned judge, now dead, observed, that the best way to amend our law would be to repeal all the laws that had been made for that purpose within the last hundred years. We have the same way of thinking with respect to all the laws relating to the sea service passed since 1661, which convinces me that we ought to be extremely cautious of making any new law for regulating that service.

By the well-concerted law passed at that time, and the custom of the navy established thereupon, our navy has been ever since so well governed that we have successfully carried on four or five naval wars, and fought many a glorious sea engagement; therefore no new law is necessary, unless it be a law for repealing all the laws relating to the sea service, passed since the year 1661.

But now with regard to the bill at present under our consideration, which has been so much and so often corrected and amended, that I may call what we have now before us the third edition; and what is surprising, this third edition seems to me to be the worst of the three; for some of the best clauses that were in the first are now left out, particularly that relating to store ships and transports employed in the government's service, the captains and crews of which were, by the first edition of this bill, made liable to the martial law, while they continued in that service. This was really a new and useful regulation: and the first war you engage in, you will find it absolutely necessary to agree to some such regulation; for by the want of such a one, the best concerted naval expedition may be disappointed. But as some people are fond of popularity, and will court it at any rate, this clause was made a sacrifice to that view.

Thus the bill has now made its appearance before us, without any such clause to recommend it; nor has it indeed, any one new clause to recommend it, but a great many clauses that ought to induce us to reject it; for most of the objections we have made against our late laws are rendered stronger by new improvements upon the respective clauses in this bill, and all the clauses in former laws which we have objected to are re-enacted by this. We shall not repeat the objections, but take notice of some of the improvements made by this bill. Last year our naval law-givers were, it seems, of opinion, that,

that no court martial ought to consist of above nine members; but this year they have altered their opinion, and increased the number to thirteen; and they have added a clause for preventing its being in the power of the admiralty, or officer empowered to hold courts martial, to direct or ascertain the particular number of persons of which any court martial shall consist. We confess we do not well understand the meaning of those two clauses; for though they do not expressly abrogate the old law, which obliges every captain who comes in sight of the flag to go on board and take his place in the court, yet they abrogate it in effect; because if there be already thirteen there, the chance-comer cannot take his place, unless one of the others be obliged to retire. Suppose, then, that some of the thirteen are his juniors, and that upon his taking his place the junior of them must retire. If this be the case, does not every one see, that increasing the number to thirteen makes it more easy to have a packed court martial, whose proceedings cannot be controlled by chance-comers, than if the highest number had been continued at nine? Because, in the former case, seven chance comers must arrive, and all senior to the seven youngest that are there, before they can control the proceedings of the court; whereas, in the latter case, five senior captains, arriving by chance, would do the business.

Courts martial are dangerous weapons in the hands of a wicked minister, but become much more dangerous, when they are put under such regulations as may enable him to pack them to his purpose. We, in this house, cannot approve of any such regulations: our ancestors have often suffered by such packed courts of judicature. Thank God! we have, by a law obtained since the Revolution, freed ourselves and posterity from that danger. No member of this house can now be tried, unless by the whole body of his peers, or at least as many of them as can attend; and as we have freed ourselves from the

danger of being tried by a packed court of judicature, we shall never consent to any regulation, which may in the least expose any of our fellow subjects to the same sort of danger.

Then as to the oath to be taken by the judges in a court martial, it was before ridiculous, but now it is quite absurd. By the law passed last session, they were not to disclose the vote of any particular member of the court, unless thereunto required by lawful authority; but by the oath prescribed in the bill now before us, they are not to disclose the vote of any member, unless thereunto required by act of parliament. This puts it out of the power of either house of parliament to inquire into the conduct of any member of a court martial, unless the crown pleases to consent to an act for that purpose. Suppose a brave admiral should be condemned and shot by the sentence of a court martial, packed up for the purpose by a revengeful favourite minister. If this bill passes, even the parliament itself could not inquire into the proceedings of that court martial, or punish any one upon that account, while that minister continued to engross the ear of his master. We may all remember a late instance, where a brave admiral gloriously disobeyed his orders, went a little farther than his instructions, and thereby acquired great honour to himself, and great advantage to his country. If such a bill as this had been then passed into a law, that admiral would have been in some danger of being tried and condemned by a court martial.

This oath is one of the most absurd that ever was invented; because it may prevent an innocent man from being able to justify himself against a prosecution at common law. We know that the members of a court martial may, by their proceedings, expose themselves to an action or prosecution at common law. A late court martial in the West Indies actually did so; and in an action brought against one of them here at home, he was cast in a large sum of money, for what he did there as a member of a
court

court martial: and a later and more famous court martial, who certainly understood nothing] of the common law, whatever they did of the naval, brought themselves into such a scrape as would have ruined them, if the learned judge they offended had not been so much of a christian as to remember that prayer, *Good Lord, forgive them, for they know not what they do.*

In all such cases, surely, any member of the court martial might justify himself by proving, that he opposed and voted against the illegal proceedings upon which the action or prosecution is founded; but if this bill should pass into a law, it will be impossible for him to bring such a proof.

This oath makes the increase of the number of which a court martial may consist, still more dangerous; for if any job is to be done, the infamy must rest upon all the members present; and though every one of them may, and probably will, privately insinuate, that he voted against it, yet no one of them dare openly assert, much less prove, that he voted against it, which will, of course, render every one of them less concerned about the infamy they expose themselves to; for the burden of infamy is like all other burdens, the more shoulders there are to support it, the lighter it sits upon every one; and in a little time we may have such a number of court martial jobbers, that they will keep one another in countenance, which will make it easy for a minister to get them to do whatever he pleases.

We shall now take notice of the extraordinary improvements made by the fifth article of war, by this bill to be established, and the restraining proviso in which this article is excepted. In the act of 1661, there is an article which says, that all spies shall be punished with death; but then that law concludes, as I have already said, with a general proviso without any exception, that jurisdiction shall

shall be thereby given, only for such of the offences aforesaid, as shall be done upon the main sea, or in vessels hovering in the main stream of great rivers, and only by persons in service and pay. Thus the jurisdiction given by that law is confined to proper places and proper persons; but the fifth article of war in this bill says, that all spies, and all persons whatsoever, who shall be found to bring or deliver any seducing letters or messages from any enemy or rebel, or endeavour to corrupt any officer, mariner, or other in the fleet, to betray his trust, being convicted thereof by the sentence of a court martial, shall be punished with death; and this article is expressly excepted in the proviso, which confines the jurisdiction of courts martial to offences committed upon the main sea, or in great rivers, and by persons in actual service and full pay; and so that every man in the kingdom seems to be subjected to the jurisdiction of a court martial, if he be accused of endeavouring to corrupt an officer or mariner to betray his trust, and that whether the person accused be in pay or no, and whether the offence be alleged to have been committed at sea or on land. Nay, the best lord in the kingdom may, by this means, be subjected to be tried, and condemned to die by a court martial; and therefore, if you go into a committee on this bill, the opinion of the judges should be asked upon this question.

In short, it seems to be a bill designed for extending the jurisdiction of courts martial, not only over the whole British dominions, but to every British subject that resides in any part of the world where the British flag can appear; for a British merchant at Lisbon, Cadiz, or elsewhere, may be kidnapped on board, and tried for endeavouring to corrupt some of the officers or sailors to betray their trust. Therefore if there was a necessity for a new bill relating to the sea service, this is not a proper bill for the purpose.

ARGU-

ARGUMENTS FOR THE BILL.

THE gentlemen have been pleased to express great regard for the act of King Charles II. relating to the sea service, and for the admiral who very probably had a share in drawing it up. As to that admiral, no one can doubt our regard for him; he certainly deserved the honours that were conferred on him, and he no way merited the reproach cast upon him by the royal commander of our fleet at that time, as was in a few hours after made manifest by the event, and by his gallant behaviour and glorious death.

But as to the act itself, we have no great regard for it; so far as it goes it is well enough; but it has many defects: and, therefore, if our fleet has been well governed, if it has acquired glory, those effects have been owing to the nature of the people, and not to the law, which is, in many respects extremely deficient, some of which we shall point out: and first, with regard to spies.

By the law, as it stands at present, no court martial, either at home or abroad, can try or punish a spy, let the proofs of a man's being such be never so evident, unless it be a man at that time in service and pay in the fleet, or ships of war. Nay, if a man, not in service or pay, should get on board the fleet, or any of his majesty's ships of war, with a design to debauch the officers or sailors, and to persuade them to mutiny, desert, or run away with the ship, and such practices should be fully proved upon him, neither the admiral nor commodore of a squadron, nor the commander of any single ship, has power to secure such a criminal. They may, indeed, turn him ashore, but they cannot legally confine him, in order to his being brought home and tried by the common law; which makes it very dangerous for our squadrons

drons or ships of war to hover or anchor upon the coasts, or in the great rivers of any of those countries, where there are any British subjects that are known to be disaffected to our present happy establishment.

Another great defect is this, that a man in service and pay cannot, by that law, be tried and punished by a court martial, even of the squadron he belongs to, for any offence or crime committed on shore. This, it is true, was remedied by the act of the sixth of the late king, as to crimes committed on shore in foreign parts: but even the noble lord himself has allowed it to be a defect in the act of King Charles II. so far as relates to foreign parts not subject to the crown of Great Britain; and, notwithstanding what has been said, it was right to extend the jurisdiction of courts martial to crimes committed on shore by persons in actual service and pay, even in our own plantations. If, by the crime so committed, any inhabitant of that plantation should be injured, to be sure, the admiral or commander would give up the criminal to be tried and punished by the civil power in that plantation: but when the crime relates only to the service, or to those only that are in the service, it was right to give the cognizance of it to a court martial, though committed on shore. And as the men belonging to a squadron or ship of war must often be employed ashore, even here at home, as well as abroad, in several sorts of necessary service, such as fitting out the ship or squadron, taking in fresh water or provisions, and the like; if they, then, commit any crime, in which no man that is not employed in the service has any concern, I am of opinion that such crimes should be made cognizable by a court martial; for otherwise the men, when employed on shore about such necessary services, might not only neglect or disobey the commands of their officers with impunity, but might actually mutiny, and beat and abuse their officers;

officers; and the officers could have no remedy, but an action at law, against fellows from whom they could recover neither damages nor costs.

A third defect in the act of King Charles II. and, indeed, in all our laws relating to the sea service, before that of last year, was, that if any Admiral or commander of a squadron should die, or be called home, or otherwise removed, the person succeeding him in command could not call a court martial without a new commission for that purpose; so that a whole squadron might, for a long time, remain without a power to try any criminal; the consequence of which was, a general encouragement to mutiny; and when men were accused of any crime, though perhaps falsely accused, there was a necessity of keeping them confined in irons till a new commission arrived.

Of this inconvenience we had a late remarkable instance; for when Admiral Vernon got leave to return home from the West Indies, Sir Chaloner Ogle, who succeeded him in the command, was a whole year without a power to try or punish any criminal on board that numerous squadron, by the ship's being taken which carried him a commission to appoint courts martial: and before advice could be had there or at home of the loss of that ship, and the ship with a new commission could arrive in the West Indies, a whole twelvemonth had elapsed, which might have been of the most dangerous consequence, if that admiral had not been a man of great discretion, and well beloved in the navy.

A fourth defect, which was never remedied till last year, was, that if twenty commanders of men of war should arrive with their ships at any one port, yet no court martial could be held for the trial of any offender or person accused; which was often found to be a great inconvenience, and sometimes was the occasion of innocent
men's

men's being kept for a long time confined. But a few years since, the captain of one of our men of war happened to take offence at his lieutenant, and confined him in irons. While he was thus confined, the ship arrived at Lisbon: there were, at that time, more than five men of war at that port. The lieutenant represented his case to the other captains, and petitioned to be tried; but as none of them had a commission for calling a court martial, no trial could be had, and the ship put to sea again, with the first lieutenant still in irons.

When they were at sea, they happened to come in sight of an enemy's ship, and were making ready to engage: but the captain then appeared so evidently to be mad, that the officers all agreed to confine him, and to give the command of the ship to the first lieutenant. Accordingly they set him at liberty, gave him the command, and after fighting the ship bravely, and bringing her home, it was found, that he had never been guilty of any offence, but that his confinement was entirely owing to his captain's not being in his right senses. Thus, not only a brave innocent man suffered a long confinement, but one of his majesty's ships was in danger of being lost, by the captains then at Lisbon having no power to hold a court martial; for, had they had such a power, the lieutenant would have been tried and acquitted, and the captain would probably have been confined, as being, in his then condition, incapable of having any command.

A fifth defect, and a defect not yet remedied, is, that if any of his majesty's ships should be attacked by a superior force, and after a brave resistance, reduced to the last extremity; yet if the captain should give orders to strike, or should yield up his ship to the enemy, he is, by the laws in being, to be punished with death, even though it should be proved, that his ship was in immediate danger of sinking.

If

If Captain Watſon had not been killed in the engagement, he would not have yielded up his ſhip ſo ſoon as ſhe was; but it is highly probable that ſhe would have been forced to yield at laſt. And yet had he at laſt ſtruck, in order to prevent the ſhip's being ſunk, and his whole crew, as well as himſelf, drowned; he muſt have been tried by a court martial as ſoon as he returned home, and muſt have been condemned to die by that court martial, in purſuance of the articles of war, as they are now worded, and if he had accordingly ſuffered, it would have been extremely cruel.

A ſixth defect, not yet remedied, is, that if any of his majeſty's ſhips ſhould take an enemy's ſhip, the captain muſt not, before judgment in a court of admiralty, order any of the goods to be taken out of the ſhip, except thoſe above deck; and the ſhip's ſtores, even though the ſhip ſhould be ſo ſhattered, as to be in the utmoſt danger of ſinking. And a ſeventh defect is really ſuch a one as ſeems to be a ſcandal to the nation; for, by the ninth naval order or article of war, eſtabliſhed by the act of King Charles II. it is ſaid, that if a ſhip taken as prize, from no reſiſtance, none of the officers or mariners being foreigners, ſhall be ill treated; which ſeems to give leave to treat thoſe ill that reſiſt. Thank God! our brave countrymen have always had too much generoſity to make uſe of the leave hereby given them: but this is no excuſe for the order itſelf.

It is a reproach to us to have an article of war that gives leave for mal-treating an unfortunate, but brave enemy; and therefore it will, by our paſſing this bill, be expunged out of our law books. Its remaining ſo long there, has, it is true, redounded much to the glory of our brave ſailors: but I am ſure it has not redounded much to the glory of our law-givers.

Befides

Besides these defects, we must observe, that there are many frauds, abuses, and cruelties, that may be committed on board his majesty's ships of war, and which cannot be punished by a court martial, as our laws stand at present; because a court martial can inflict no punishment that is not expressly appointed by the act of King Charles II. or warranted by the laws and customs used at sea before that act was passed. False musters, for example, cannot by that law be punished by the sentence of a naval court martial. It has been a practice too frequent, especially in the West Indies, for captains of his majesty's ships to lend their men to masters of merchant ships, and lie in harbour till those men returned. It has been known, that a captain of a twenty-four gun ship, which should have an hundred and twenty men on board, has lent out an hundred at a time. The men find their account in it, because they have higher wages from the merchants, and, in consideration of this, they assign their pay and provisions on board the king's ship, to the captain or some trustee for him. But during the whole time of their absence, the government is cheated, and the public service neglected: nay, we have had disputes between captains about men belonging to one of his majesty's ships, who have been pressed out of the merchant service, by the captain of another.

This practice may be of the most dangerous consequence in time of war, and yet it cannot be punished in any other way than by cashiering, which is far from being an adequate punishment; because it is so seldom that any such practice can be proved.

There are likewise many sorts of cruelties which may be exercised on board his majesty's ships, and cannot be punished by the sentence of a court martial. But lately a
captain

captain was accused of beating a man on board his ship, for a small fault, in the most cruel and merciless manner; the fact was fully proved, but no proper punishment could be inflicted. And then as to frauds, they appear in so many different shapes, that it would be tedious to give an account of all that have come to our knowledge, therefore we shall mention only two. Some years since, a captain of one of his majesty's ships had the good luck to take a very rich prize: he was not content with his own share, but he resolved to cheat one of his midshipmen out of his. With this view, about two months after the prize was taken, he falsifies the books of the ship, gets this midshipman entered as a common man, and a relation of his own, then on board, entered as a midshipman. This was fully proved; but a court martial could give no redress nor inflict any punishment. The other fact we shall mention, is of a rich man of war of seventy-four guns, which was driven ashore in the West Indies by one of our squadrons there. As soon as she was aground her crew deserted her, and our commodore sent an officer, with a proper number of men, and with orders to bring her off; or, if that could not be accomplished, to set her on fire. Accordingly the officer and his men landed; and some time after they landed, the ship was seen in a blaze.

The officer returned to the squadron, and it was supposed that he had done nothing but his duty. But some time after, it began to be whispered among the men, that the ship might have been easily got off, being a strong new ship; but that the officer had plundered her privately of a great deal of money and jewels, and had then set her on fire to conceal the theft he had committed.

Upon this he was called before a court martial; the fact was fully proved; but the court could pass no sentence, nor inflict any punishment; though he highly de-

served death for depriving his country of such an useful and valuable prize.

In these, and many other cases, all the court martial could do, was to report the facts, as fully proved, to the board of admiralty; and all that the board could do, was to cashier the officer, a punishment too mild for the crime committed. It must, therefore, be allowed, that in the act of 1661, there are a great many defects; and, indeed, we ought to be no way surprized at that act's being in so many respects deficient, when we consider with what precipitancy it was passed: for, by the journals, we find that it was but a few days under consideration.

It is obvious that a new law is necessary for the right government of his majesty's navy and ships of war. It is what has been long wanted and loudly called for, by all those of my acquaintance that have any concern with the navy.

April 10th. A clause was offered for providing, that in case of any capital crime to be tried in Great Britain, or in the narrow seas, the number of the court martial shall not be less than thirteen, of which nine shall be for the sentence of death; and in all other parts, mere five might constitute a court martial, four of the five should concur in the sentence of death. But upon the question's being put, the clause was rejected without a division.

The most remarkable thing that happened upon the report of the bill, was the leaving out that article of war for subjecting the half-pay officers of the navy to the same discipline as if actually upon full pay.

This occasioned a strong debate; and the minister (Mr. Pelham) beginning to apprehend some disagreeable consequences from the spirit without doors against the bill, yielded to the opposition, and agreed to the leaving out that article, upon which the bill was read a third time, and sent to the lords.

No. LV.

Minutes of the Proceedings of a General Court Martial on Serjeant Ginger of the 34th Regiment, who appealed from the Sentence of a Regimental Court Martial. Referred to Vol. I. p. 146. Vol. II. p. 36.

Castle of Good Hope, 17th May, 1802.

This day assembled agreeable to the general orders of Lieutenant-general Dundas, the general court martial consisting of Brigadier-general J. P. Vandeleur, president:

MEMBERS.

Lieutenant-colonel James Catlin Craufurd,	91st.
Major William Parr,	— 22d.
— Robert Gordon,	— 34th.
Captain J. H. Fitzsimmons,	— 65th.
— B. Fenwick,	— R. A.
— John Culton,	— do.
— A. Campbell,	— Cape R. R.
Major George Dodsworth,	— 34th.
— William Kerseleman,	— R. E.
— Richard Stewart,	— 65th.
Captain J. B. Garstin,	— do.
— Stephen R. Chapman,	— R. E.
— Edward,	— 81st.
Captain Robert M'Nab, 91st Regiment, Deputy Judge-advocate.	

Major Glegg, 91st regiment being, from sickness, unable to attend his duty as a member, the court proceed with the remaining fourteen members, having previously given the parties concerned notice in public court, that when the opinions of the members are to be collected,

the junior officer will not vote, provided at that time the court should continue fourteen members *.

The president, members, and judge advocate respectively sworn.

The prisoner before the court being Serjeant Joseph Ginger, of the 34th regiment, who appeals from the sentence of a regimental court martial; and which court assembled on the 26th of April last, at Stellenbosch, consisting of

Captain W. Fenwick, 34th regiment, president.

MEMBERS.

Lieut. Dickens, 34th reg.		Lieut. Terriwest, 34th reg.
— Johnson, ditto.		— Tew, ditto.

Charges upon which the appellant was tried before the said regimental court martial :

“ Serjeant Ginger, 34th regiment, confined by order of Colonel Dickens, commanding 34th regiment, for disobedience of orders, being out of his barracks after hours, and unsoldier-like behaviour to Lieutenant Dawson, on the night of the 18th April.”

Sentence pronounced by that Court Martial.

“ The court are of opinion, that the prisoner, Serjeant Ginger, is guilty of the crimes laid to his charge (being a breach of the articles of war), do therefore sentence the prisoner to be reduced to the ranks to serve as a private soldier, and also receive five hundred lashes in the usual

* A variation in the form naturally suggests itself in this place, namely, the commanding officers' orders for assembling the general court martial should be read and inserted in the preamble of the minutes; and it would not be amiss to insert also the appellants' petition or memorial to the commander in chief, in the same manner as letters of accusation are done in the minutes of naval and military courts martial.

manner,

manner, at such time and place as the commanding officer may think proper.

(Signed)

W. FENWICK,

President and Captain 34th Regiment."

"Approved and ordered to be put into execution at the Castle of Good Hope, upon Wednesday, the 28th April, 1802.

(Signed)

R. M. DICKENS,

Colonel, commanding 34th Regiment."

Colonel R. M. Dickens, commanding the 34th regiment, duly sworn, acknowledges that the regimental court martial held on Serjeant Ginger, and now before the court, assembled by his order, and the sentence approved of by him, as docketed on the proceedings of the court.

The prisoner being asked by the judge advocate in open court, if he was the person who appealed from the sentence of the regimental court martial; he answered, yes; and pleaded not guilty to the charge on which he was tried, and now before the court.

Appellant's Address.

"Mr. President, and Gentlemen of this most honourable Court.

"I am extremely sorry to be under the necessity of giving you so much trouble.

"Nothing but the fullest conviction of my having been extremely ill-used and degraded, which I trust I shall prove by my conduct never to have merited, being conscious of having at all times, and in every situation I have been placed in, supported a character free from reproach; my anxiety to clear it from the stain it has received, and rescue it from the further ignominy that must be attached to it, by submitting to the sentence of the court martial at Stellenbosch, could have induced me to appeal to this most honourable court.

“ To say nothing of the abuse I received from Mr. Dawson, which was adjusted by a court of enquiry, on the day following that transaction.

“ I cannot but observe, that a man of the worst conduct and character, and charged with committing the most atrocious crime, could not have been escorted to Stellenbosch in a more ignominious manner.

“ And I conceive, both in the formation and proceeding of that court martial, it will appear somewhat singular; in the formation, by placing as one of the members, an officer, who was at that time on other duty, and in the proceedings by my being debarred of having the principal evidences necessary to enable me to support my defence.

“ And I also consider, that the charges exhibited against me were not substantiated by any evidence that could warrant the severe sentence awarded against me.

“ On reviewing minutely my conduct, during the whole of this affair, I feel myself to have been most unworthily treated: and it appeared to me, that no other means presented itself of obtaining any redress, than by laying my grievances before a general court martial.

“ Mr. President, and Gentlemen of this honourable Court, I have now stated an imperfect outline of the motives that influenced me to appear before you; and confident that you will have the goodness to make every allowance for a man in my situation, I commit myself into your hands, fully persuaded that your decision will be guided by the principles of honour and justice.

(Signed)

“ JOSEPH GINGER.”

Resolution of the Court.

The court proceed to examine the several witnesses who had given their testimony before the regimental court martial, and called in the same order.

Lieutenant

Lieutenant and Adjutant Dawson, 34th regiment, duly sworn; and the following evidence given before the regimental court martial being read over to him, he confirms it. Witness.

Evidence by Mr. Dawson.

Lieutenant and Adjutant Dawson informs the court, that about eleven o'clock of the night of the 18th instant, he met the prisoner out of his quarters on the works of the castle; that he ordered him twice or thrice home, and that the prisoner did not appear willing to obey the orders, but entered into a conversation of a very irritating nature, and at last said he would go when he got his hat, upon which the evidence ordered him home without it; the prisoner attempted going for his hat, when the evidence took him by the collar to prevent him. Serjeant Ginger then said, he would not suffer that usage from any man, and immediately struck the evidence on the face; a scuffle ensued, when several blows passed on both sides. The above circumstance happening near the quarters of the drum-major and Serjeant Quintin, the noise brought them out."

Was the business of the night of the 18th April brought before a court of enquiry by order of the commanding officer? Question by the appellant.

It was the next morning.

Answer.

After that court was closed, did you apologize to me for the treatment I had received from you on the preceding night, in presence of some serjeants, and from that time did you consider the matter to have been finally settled? Question by the appellant.

After the court of enquiry I saw the prisoner, and from his misconduct of the night before, which caused me to strike him, his face was a good deal hurt; I sent for the three serjeants who were present at part of the business, Answer.

and mentioned before them to the prisoner, that in consequence of my striking him as I had done, that I would forgive him; but desired him to notice, that if I had brought the matter forward and had not struck him, the serious situation he would be in; which he admitted. I added, that I was sorry I had used him so, but that his misconduct had occasioned it, as he was a person I had a respect for.

Question by
the appel-
lant.

In the conversation you had with me in the orderly room, after the departure of the serjeants, do you recollect that I observed to you, that my epaulettes were lost and my trowsers spoiled?

Answer.

I do. And ordered him a new pair of trowsers, adding I should pay for them as well as his epaulettes if he could not find them.

The court adjourned till to-morrow at 11 o'clock.

Castle of Good Hope, 18th May, 1802.

Lieutenant Dawson, Adjutant of the 34th regiment duly sworn.

Question by
the appel-
lant.

Was I serjeant major of the regiment on the night of the 18th April, and mustered regularly in the regiment as such on the 24th of the preceding month?

Answer.

He was, and mustered as such.

Question by
the court.

Was he reduced by the sentence of any court martial from the situation of serjeant major until the regimental court martial assembled at Stellenbosch on the 26th April last?

Answer.

He was not tried, but Colonel Dickens ordered him to be reduced from serjeant major to serjeant.

Colonel Dickens in the court acknowledges that the prisoner was mustered as serjeant major, and reduced by him from that situation to serjeant, by his regimental order, issued the 24th April, a copy of which here follows:

Copy.

Copy, Regimental Orders by Colonel Dickens 24th April, 1802.

“ Serjeant Major Ginger is no longer to be considered as serjeant major of the 34th regiment, or to be obeyed as such. He is transferred to the grenadier company, and to be sent over immediately to Stellenbosch in handcuffs, under the charge of one serjeant, one corporal, and twelve privates. Lieutenant and Adjutant Dawson, Serjeant Quintin, Neale, and Baker, are also to repair to Stellenbosch immediately on receipt of this order.”

Resolution of the Court.

It having been clearly proved to the court, that the appellant was serjeant major of the 34th regiment, and regularly mustered as such, and tried by the court martial from which he has appealed as a serjeant: it therefore appears to the court, that the proceedings of the regimental court martial are invalid, inasmuch as that the appellant was not, by any sufficient authority, reduced from the rank and pay of serjeant-major to that of a serjeant. The general court martial, therefore, rest their proceedings, until this opinion be submitted to the commander in chief, and receive his orders as to any further investigation.

(Signed)

J. P. VANDELEUR,
Brigadier-general and President.

(Signed)

ROBERT McNAB.
Deputy Judge-advocate.

The court adjourned till to-morrow at eleven o'clock.

Castle of Good Hope, 19th May, 1802.

The court assembled, and the following letter received from Lieutenant-general Dundas read :

SIR,

Government House, 19th May, 1802.

I have had the honour to receive an extract from the proceedings of the general court martial of which you are president, submitting to my consideration a difficulty

which has arisen in the progress of the appeal made from a regimental court martial by the serjeant-major of the 34th regiment, arising from his previous reduction from the rank and pay of serjeant-major to that of serjeant, which appears to the court to have been done without sufficient authority; and I have to signify my concurrence in opinion with the court, that as there is not any competent regimental authority by which a non-commissioned officer can be degraded, unless by the sentence of a court martial, I have to request that the general court martial of which you are president, will not proceed in the investigation of the appeal at present before them, until the court have inquired in the first instance, and reported to me the particulars which may have occasioned the degradation of serjeant major Ginger to the rank of serjeant, together with such other circumstances as may have occurred in his subsequent trial by a regimental court martial, in order to enable me to judge how far the proceedings in this case have been regular and agreeable to the rules of his majesty's service.

I have the honour to be your most obedient and most humble servant,

(Signed)

FRANCIS DUNDAS,
Lieutenant-general.

*To Brigadier-general Vandeleur,
President of a General Court Martial.*

In consequence of the foregoing letter the court desired Colonel Dickens, who was duly sworn, to state the particulars accordingly.

Statement by Colonel Dickens.

Statement of the circumstances which induced Colonel Dickens to reduce Serjeant Ginger from serjeant-major to serjeant.

When

When Lieutenant-general Dundas visited Stellenbosch in the latter end of April, I heard, from a report brought by Lieutenant Baker, his aid-de-camp, that a very serious breach of discipline had taken place in the 34th regiment; that Serjeant-major Ginger had struck Lieutenant and Adjutant Dawson, and behaved in a most mutinous and unfoldier-like manner. In consequence of this report, I wrote to Major Dodsworth, expressing my surprise that such a circumstance should have occurred without its being reported to me. I received an answer from Major Dodsworth, inclosing me the proceedings of a court of inquiry which had been held on the business; and I was so forcibly struck with the impropriety of Serjeant Ginger's conduct, from what he himself urged in his justification, that I issued a regimental order that he was no longer to be obeyed as serjeant-major; but transferred him as serjeant to the grenadier company, and ordered a regimental court martial, which tried and found him guilty. The sentence of that court martial he had appealed against.

My letter to Major Dodsworth, as well as the regimental order, which I beg to read, will shew that my opinion, from the first, was decidedly, that Serjeant Ginger should have been tried by a general court martial in the first instance. But the steps which had been taken before the matter came to my knowledge having rendered that measure ineligible, I was under the necessity of marking my disapprobation as strongly as I could of such mutinous and unfoldier-like conduct.

Copy of the Regimental Orders referred to in the foregoing Statement.

R. O.

27th April, 1802.

The regimental court martial of which Captain Fenwick is president, and by which Serjeant Ginger was tried for disobedience of orders, being out of his barracks after hours,

hours, and unfoldier-like behaviour to Lieutenant and Adjutant Dawson, on the night of the 18th instant, having found the prisoner guilty of the crimes laid to his charge, have sentenced him to be reduced to serve in the ranks as a private soldier, and to receive five hundred lashes in the usual manner, at such time and place as the commanding officer shall think proper.

Colonel Dickens approves of the above sentence, and directs that it be carried into execution on Wednesday, the 28th instant, at such time as Major Dodsworth shall appoint.

Colonel Dickens cannot, consistently with his duty, omit, on this occasion, to observe, that had not particular circumstances prevented it, he would most assuredly have brought this matter to a much more serious issue, which the good of his majesty's service, and the discipline of the 34th regiment especially, appear to him to have demanded.

(A true copy) (signed) WILLIAM DAWSON,
Adjutant 34th Regiment.

Report of the Court in Obedience to the foregoing Letter.

The court having, in obedience to the directions of Lieutenant-general Dundas, called upon Colonel Dickens to state the circumstances that occasioned the degradation of Serjeant-major Ginger:

The court beg leave to refer the Lieutenant-general to Colonel Dickens' statement, given on oath, No. 1. The regimental orders of the 24th and 27th of April issued by him.

The court have to state that Colonel Dickens commanded a detachment of the troops at Stellenbosch, and ordered the prisoner to be sent to that post, where he was tried by officers of the 34th flank companies on that detachment. And it appears that previous thereto, the officer commanding the 34th regiment in the castle (at which

which place the offence is stated to have been committed) had, after inquiry into the circumstances which happened on the night of the 18th April, permitted the prisoner to return to his duty, and continue at it until the receipt of the order issued by Colonel Dickens. The court have further to add, that the two field officers and senior captain, on the spot, having made every possible inquiry, conceived it the best for both parties, and the credit of the service, that the matter should be made up privately, more particularly as they had strong grounds for supposing that the adjutant was much in liquor, and had acted with unbecoming violence.

(Signed)

J. P. VANDELEUR,

Brigadier-general and President.

(Signed)

ROBERT M'NAB,

Deputy Judge-advocate.

Castle of Good Hope, 19th May, 1802.

The court adjourned till to-morrow at eleven o'clock.

Castle of Good Hope, 20th May, 1802.

The court assembled and adjourned till to-morrow.

Castle of Good Hope, 21st May, 1802.

The court assembled this day, and the following letter from Lieutenant-general Dundas, addressed to the president, together with the whole of the proceedings and letters, as duly recorded, were publicly read in court, and in the presence of Colonel Dickens, commanding the 34th regiment, and the appellant, Serjeant-major Ginger, of the same regiment.

Copy of Lieutenant-general Dundas's Letter to the President.

SIR,

Government-House, 21st May, 1802.

I have the honour to acknowledge the receipt of your letter of the day before yesterday, stating, in compliance with my wishes, as expressed in my letter of the 19th instant,

instant, the circumstances which have occasioned some irregularities in the trial of Serjeant-major Ginger, of the 34th regiment, by a regimental court martial, the proceedings of which are now in appeal before the general court martial of which you are president; and having duly considered all the particulars of the case, as stated by you in the aforesaid report, I have to inform you, that the proceedings of the regimental court martial, held on Serjeant-major Ginger, 34th regiment, having been irregular, must therefore be cancelled accordingly. And I have to desire you will signify to the general court martial of which you are president, that the proceedings of the 34th regimental court martial having thus become invalid, the appeal from the sentence is consequently no longer a matter to be submitted to the consideration of the general court martial, it being my intention to order Serjeant-major Ginger to be released, and return to his duty as serjeant-major of his majesty's 34th regiment.

I have the honour to be your most obedient and most humble servant,

(Signed) FRANCIS DUNDAS, Lieut. Gen.
Brigadier-general Vandeleur, &c. &c.

(Signed) ROBERT M'NAB, Dep. Judge-adv.

No. LVI.

[Sign Ma-
nual.]

[Seal.]

Form of Warrant, under the King's Sign Manual, for holding a General Court Martial. Referred to Vol. I. p. 132.

Whereas it hath been most humbly represented unto us, that the following charge has been exhibited against —

— viz. —

which

which charge we think fit should be inquired into by a general court martial, our will and pleasure therefore is, that a general court martial be forthwith held upon this occasion, which is to consist of whom we appoint president thereof, and of a sufficient number of other officers, of competent rank and quality, who can be conveniently summoned to attend the same, and you are to order the provost martial general of our forces, or his deputy, to give notice to the said president and officers, and all others whom it may concern, when and where the said court martial is to be held, and to summon such witnesses as may be able to give testimony touching the charge aforesaid, the said provost martial general and his deputy, being hereby required to obey your orders, and give their attendance where it shall be requisite, and we do hereby authorize and empower the said general court martial, to hear and examine into all such matters and informations as shall be brought before them, touching the charge against the said

as aforesaid, and to proceed in the trial, and in giving sentence according to the rules of military discipline. And for so doing, this shall be, as well to you as to the said general court martial, and all others whom it may concern, a sufficient warrant. Given at our court at St. James's, this day of
in the year of our reign.

By his majesty's command.

[Secretary of State's signature.]

To

Our right trusty and well beloved councillor,
Judge-Advocate General of our Forces,
or his Deputy.

No. LVII.

SECTION I.

[Sign Ma-
nual.]

[Seal.]

Warrant, under the King's Sign Manual, to a Commander in Chief of his Majesty's Forces, empowering him to convene military Courts Martial. Referred to Vol. I. p. 132.

Whereas an act was made and passed in the last session of parliament, entitled an Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters; and whereas we have been pleased to establish articles of war for the better government of all our forces, which act of parliament and articles of war are hereunto annexed; we, for the more effectually carrying the purposes of the said act and articles of war into execution within the limits of your command, have thought fit to direct, and we do hereby authorise and empower you from time to time, as occasion may require, to convene, or cause to be assembled, general courts martial for the trial and punishment of mutiny and desertion, or any other offence committed against the rules of military discipline by any officer or soldier of our forces under your command.

And we do hereby further empower you to direct your warrant to any officer, not under the degree of a field officer, having the command of a body of our forces there, authorizing him to convene courts martial for the trial of offences committed by any officer or soldier under his command, every of which courts martial shall consist of a president and of a competent number of other officers who can be conveniently summoned to attend the same, regard being always had, as well in the appointment of such president, as in the rule and quality of the
other

other officers composing such courts martial, to the rules prescribed by the said act of parliament and articles of war. And we do hereby authorize and empower such court martial to hear and examine all such matters and informations as shall be brought before them, touching the misbehaviour of any commissioned officer, non-commissioned officer, or soldier, by mutiny, desertion, or otherwise, as aforesaid; and to proceed in the trial of such charges, and in giving of sentence and awarding punishment, according to the powers and directions contained in the said act of parliament and articles of war.

And whereas it is necessary to have military discipline kept up amongst our said troops under command, in as great exactness as possible, and as nothing can contribute more to retain the soldiers in due obedience to their officers, and to make them diligent in discharging the duty incumbent on them, than the bringing delinquents to speedy justice; our will and pleasure therefore is, and we do hereby further authorize and empower you, when and as often as any sentence shall be given and passed by a general court martial, legally constituted and appointed as aforesaid, to cause such sentence to be put into execution, or to mitigate or remit the same as you shall judge best and most convenient for the good of our service, without waiting for our further orders, except in the case of commissioned officers convicted of capital crimes, or adjudged to be cashiered, in which case, as in other instances wherein you shall think it proper to suspend the execution of any sentence, the proceedings of a court martial upon such trial are to be transmitted to our judge-advocate-general in Great Britain, in order to their being laid before us for our consideration, and that there may not in any case be a failure of justice from the want of a proper person authorized to act as judge-advocate. We do hereby further empower you, in default of a

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person appointed by us, or deputed by the judge-advocate-general of our forces, or during illness or occasional absence of the person so appointed, or deputed to nominate and appoint a fit person from time to time for executing the office of judge-advocate at any such court martial for the more orderly proceedings of the same.

And for enforcing the adjudication or sentence of any such court martial, we do also give you authority to appoint a provost martial to use and exercise that office, as it is usually practised in the law martial.

And for exercising the several powers, matters, and things herein expressed, these shall be, as well to you, as to the said courts martial, and all others whom it may concern, a sufficient warrant and authority.

Given at our court of St. James's, this 9th day of October, 1793, in the thirty-fourth year of our reign.

By his Majesty's command,

(Signed)

HENRY DUNDAS.

To our trusty and well-beloved David Dundas, Major-general and Commander in Chief of our Forces at
or to the Officer commanding in chief
our said Forces for the time being.

SECTION II.

Warrant by a General Officer, commanding in Chief, to a Brigadier-general, authorizing him to convene General Courts Martial, and to appoint a proper Person to act as Judge-advocate.

[L. S.]
Martinique.

By his Excellency Lieutenant-general Thomas Trigge, Commander in Chief of his Majesty's forces in the West Indies, &c. &c. &c.

By virtue of a warrant under his majesty's sign manual, bearing date the 25th day of March, 1800, authorizing

me to empower any officer, (not under the rank and degree of a field officer), having the command of a body of his majesty's forces, to convene, or cause to be assembled general courts martial for the trial and punishment of mutiny and desertion, or any other offence committed against the rules of military discipline by any officer or soldier under his command. Every of which court martial shall consist of a president and competent number of other officers, who can be conveniently assembled to attend the same: regard being always had, as well in the appointment of such president, as in the rank and quality of the other officers composing such courts martial, to the rules prescribed by an act of parliament, intituled "An Act for the Punishment of Mutiny and Desertion," and articles of war; you are hereby authorized to convene general courts martial for the aforesaid purposes, according to the rules and regulations prescribed. And all such courts martial are empowered to hear and examine all such matters and informations as shall be brought before them, touching the misbehaviour of any commissioned officer, non-commissioned officer, or soldier, by mutiny, desertion, or otherwise, as aforesaid; and to proceed in the trial of such charges, and giving sentence, and awarding punishment, according to the powers and directions contained in the said act of parliament and articles of war.

And whereas it is necessary to have a military discipline kept up amongst the troops under your command in as great exactness as possible, and as nothing can contribute more to retain the soldiers in due obedience to their officers, and to make them diligent in discharging the duty incumbent on them, than bringing delinquents to speedy justice, you are hereby directed, when and as often as the proceedings are closed of any such court martial, legally constituted as aforesaid, to cause the said proceedings to be transmitted for my consideration. And that there

may not be a failure of justice in any case, from the want of a proper person authorized to act as judge-advocate, you are hereby further empowered to nominate and appoint a fit person, from time to time, for executing the office of judge-advocate at any such court martial for the more orderly proceedings of the same.

Given under my hand at head quarters, Martinique,
this 31st day of July, 1800.

THOMAS TRIGGE, Lieutenant-general.

By his Excellency's command,

R. A. DARLING, Military Secretary.

To his Excellency the Hon. A. C. Johnstone, Brigadier-general, commanding his Majesty's Troops in the Island of Dominique.

No. LVIII.

SECTION I.

Warrant by a Commander in Chief for convening a General Court Martial. Referred to Vol. I. p. 132.

By the Honourable Charles Stuart, Lieutenant-general and Commander in Chief of his Britannic Majesty's Forces in the Kingdom of Corsica, &c.

Whereas powers and authority are vested in me to convene general courts martial for the trial and punishment of mutiny and desertion, or any other offence committed against the rules of military discipline by any officer or soldier of the forces under my command; I do hereby authorize and appoint you to be president at the general court martial, ordered to be holden on Wednesday, the 26th instant.

For

For which this shall be your sufficient warrant.

Given under my hand and seal at Bastia, this twenty-fifth day of November, one thousand seven hundred and ninety-four.

(Signed)

CHARLES STUART,
Lieutenant-general.

By order of the Commander in Chief,

(Signed)

JOHN DRINKWATER,
Secretary.

*To Robert Brereton, Esq. Major of the 30th,
or Cambridgeshire Regiment of Foot.*

SECTION II.

*Warrant by a General, Commanding in Chief abroad, to the
President to assemble a Military Court Martial.*

By Francis Dundas, Esquire, Lieutenant-general, and commanding his Majesty's Troops at the Cape of Good Hope, and Dependencies thereof.

To Colonel John Hamilton, of his Majesty's 81st Regiment of foot.

By virtue of the power and authority given and granted to me by his majesty, I do hereby constitute and appoint you to be president of a general court martial to be held at Wynberg camp, on Monday next the 6th of December instant, at ten o'clock. And the said court martial is hereby authorized and required to hear and examine all such matters and information as shall be brought before them, touching the misbehaviour of any commissioned officer, non-commissioned officer, or soldier, by mutiny, desertion, or any other offence committed against the rules of military discipline. And to proceed to the trial of such charges, and in giving of sentence, and awarding
Y 3 punishment,

punishment, according to the powers and directions contained in an act of parliament now in force, intituled "An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters," and the articles of war. And for so doing, this shall be to you, and all concerned, a sufficient warrant and authority.

Given under my hand and seal at head quarters,
Wittle Boom, this 3d day of December, 1802.

(Signed)

FRANCIS DUNDAS,
Lieutenant-general.

(Signed)

P. ABERCROMBY,
Major of Brigade.

No. LIX.

SECTION I.

Form of a Military Deputy Judge-advocate's Warrant.
Referred to Vol. I. p. 235.

By his Honour Lieutenant-general Francis Dundas, Colonel of his Majesty's Scotch Brigade, Governor of Carrick Fergus in Ireland, Lieutenant-governor, acting Governor, and Commander in Chief of his Majesty's Town and Settlement of the Cape of Good Hope, in South Africa, and of the Territories and Dependencies thereof, and Ordinary and Vice-admiral of the same.

To Captain Robert M^cNab of his Majesty's 91st Regiment.

By virtue of the power and authority to me given by his majesty, I do hereby constitute and appoint you, Captain Robert M^cNab, of the 91st regiment, to be deputy-judge-advocate at the Cape of Good Hope, and as such to perform all the duties of that avocation to the best of your abilities and understanding, carefully following and obeying

obeying all such instructions and directions as you may from time to time receive from me, or from any other person commanding his majesty's forces in this colony. And for so doing this shall be unto you, and to all concerned, a full and sufficient warrant and authority.

Given under my hand and seal at the Castle of Good Hope, this 14th day of May, 1802.

FRANCIS DUNDAS, Lieutenant-general.

By his Honour's command,

T. C. SMYTH, Adjutant,
Acting Military Secretary.

SECTION II.

Warrant to act as Deputy Judge-advocate at a Military Court Martial.

By Charles O'Hara, Esquire, Major-general of his Majesty's Forces, Colonel of the 22d, or Cheshire Regiment of Foot, Commander in Chief of the Town and Garrison of Gibraltar.

To John Drinkwater, Esquire, Captain in the 2d Battalion of his Majesty's 1st, or Royal Regiment of Foot.

By virtue of the power and authority vested in me by his majesty, I do hereby appoint you, the said John Drinkwater, to act as deputy judge-advocate during the indisposition of John Morrison, Esquire, at all such general courts martial as shall be held for the trial of any person or persons who do or shall belong to any of his majesty's forces serving within the town and garrison of Gibraltar, pursuant to an act of parliament now in force, viz. an act, intituled "An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters," and to such articles of War as shall be

established by his majesty, during the continuance of the power and authority hereby given to you to act as aforesaid.

Given under my hand and seal at Gibraltar, the 2d day of October, 1787, and in the twenty-seventh year of his majesty's reign.

By order of the commander in chief,

CHARLES O'HARA.

No. LX.

Joint Warrant to a President of a General Court Martial and officiating Judge-advocate. Referred to Vol. I, p. 235.

Dominica. By his Excellency the Honourable Andrew Cochrane Johnstone, Governor of the Island of Dominica, Brigadier-general commanding his Majesty's Troops in the said Island, &c. &c.

By virtue of a warrant, under his Excellency the commander in chief's sign manual, bearing date at head quarters, Martinique, the 31st day of July, 1800, empowering me to convene general courts martial for the trial and punishment of mutiny and desertion, or any other offence committed against the rules of military discipline by any officer or soldier under my command, I do hereby order a general court martial to be assembled on the 19th day of August, 1800, at Fort Young, in the island of Dominica, at nine o'clock in the morning, for the trial of such prisoners as may be brought before it, whereof Lieutenant-colonel Guard of the 45th regiment is to be president. And whereas I have been further authorized to nominate
a fit

a fit person, from time to time, for executing the office of judge-advocate at any such court martial, for the more orderly proceeding of the same, I do, therefore, hereby appoint Gilbert Salton, Esquire, to officiate as judge-advocate at the general court martial hereby ordered to be assembled, and for so doing these shall be, as well to the said Lieutenant-colonel Guard and Gilbert Salton, as to all others whom it may concern, a full and sufficient authority for executing the several matters and things herein expressed.

Given under my hand and seal at arms, at the government-house, Dominica, this 18th day of August, 1800.

ANDREW COCHRANE JOHNSTONE.

To Lieutenant-colonel Guard, 45th Regiment, and Gilbert Salton, Esquire, the former appointed President, and the latter to officiate as Judge-advocate, at a general court martial, to be convened at Fort Young.

No. LXI.

Form of Summonses by a military Judge-advocate to Witnesses for the Prosecutor or Prisoner. Referred to Vol. I. p. 236. and Vol. II. p. 18.

FOR THE PROSECUTOR'S WITNESS.

SIR,

A general court martial being appointed to be held at the castle of Good Hope, on Monday, the 17th day of May, at eight o'clock in the morning, for the trial of A. B. of the 34th regiment, upon charges preferred against him by C. D. captain in the said regiment, and
the

the said C. D. having represented that your testimony will be material in support of the said charges, I am to desire you, and you are hereby summoned to give your attendance at the said court martial in order to your being examined as a witness *. I am. &c.

P. S. You will be pleased to acknowledge this letter of summons.

No. LXII.

Case stated to the Judge-advocate-general, whether, when the Members of a Court Martial are to deliver their Opinion, an Interpreter may, in their Discretion, be suffered to be present? and Opinion thereon. Referred to Vol. II. p. 26.

SIR,

Dominica, 24th October, 1800.

I have the honour to transmit to you a copy of the proceedings of a general court martial holden on the 19th and by adjournment on the 20th and 21st days of August last, and I avail myself of this opportunity to submit to you the following particulars.

From the number of foreign officers serving with the army here, some of them must occasionally be interested in courts martial; and from the imperfect knowledge which many of them have of the English language, the aid of an interpreter will, in such cases, be required; but a court martial cannot compel the attendance of an interpreter, and they have no remuneration to offer him for

* For the prisoner's witness the following variation: and the said A. B. having represented that your testimony will be material towards his defence, I am to desire you, &c.

his

his trouble. During the proceedings, whereof a minute is now forwarded, a gentleman of this place handsomely attended, on the first intimation from the court that they wished his attendance, and he performed his duty much to the satisfaction of every member. But a difficulty had nearly occurred; for when the court came to deliberate on the sentence, Mr. Quin of course left the room, and there was then no person, sufficiently versed in the French language to confer with Captains Ride and Feraire, of the 9th W. I. regiment, who understand but little of the English. The difficulty was got over by an assurance from these gentlemen, that perfectly recollecting the evidence and the defence, they were prepared to deliver their opinion; but the circumstance appeared to the president, and to other members, to be of sufficient importance, to warrant my proposing to you the following questions:

1. Whether, when the members of a court martial are to deliver their *opinion* on any point, and more especially on the judgment to be pronounced, an interpreter may, in their discretion, be suffered to be present? And

2. Supposing that he may, what oath should be previously administered to him? an oath, in addition to the oath faithfully to interpret, similar to that which is administered to the judge-advocate, or what other?

Sir Charles Morgan, Bart.

Judge-advocate-general, London.

*Copy of Sir C. Morgan's Answer, dated London, 27th
January, 1801.*

In regard to your question, "Whether, when the the members of a court martial are to deliver their opinion on any point, and more especially on the judgment to be pronounced, an interpreter may, in their discretion, be

be suffered to be present?" I have to submit to you my opinion, that as no provision is made in that behalf, it would not be advisable to admit of it. The case, I think, must very rarely happen, if ever, in which an officer may not be able to make his vote understood by some of his brother members, which will solve the difficulty, and the interpreter will be able to assist him *in every particular except only that of delivering "his opinion."*

No. LXIII.

Minutes of the Proceedings of a General Court Martial held, by special Warrant of the Lords Commissioners of the Admiralty, on Lieutenant-general Innes of the Royal Marines. Referred to Vol. II. p. 146.

At a general court martial, held at the royal hospital at Chelsea, on Saturday, the 5th, and Tuesday, the 8th days of June, 1802, in pursuance of a special warrant from the lords commissioners for executing the office of lord high admiral of the united kingdom of Great Britain and Ireland, &c. directed to Lieutenant-general William Souter Johnstone, bearing date the 10th. day of May, 1802 ;

Lieutenant-general William Souter Johnstone, president.

Lieutenant-general James Balfour,

Lieutenant-general Andrew John Drummond.

Major-general John Bowater.

Major-general Sir Charles Asgill, Bart.

Major-general Isaac Gascoyne.

Major-general William Earl of Banbury.

Lieutenant-general

Lieutenant general Francis D'Oyley.

Lieutenant general John William Egerton.

Major-general Thomas Avarne.

Major-general Andrew Cowell.

Major-general Honourable James Forbes.

Major-general William Cartwright.

John Augustin Oldham, Judge-advocate.

The several members of the court being duly sworn, and the judge advocate also sworn, Lieutenant-general Harrie Innes, of the royal marines, came prisoner before the court, and the following charges, as recited in the said warrant of the lords commissioners of the admiralty, were exhibited against him: *viz.*

“ That Serjeant James M'Guire, of the 10th company of marines, who was employed on the recruiting service under the command of Lieutenant-colonel James Berkeley, deserted his majesty's service in the month of February, 1800, and continued a deserter from his majesty's service until and after the 1st day of May then next following, and that Lieutenant-general Harrie Innes, being then colonel commandant of the first, or Chatham division of royal marines, had notice of the desertion of the said Serjeant James M'Guire in the same month of February, notwithstanding which the said Lieutenant-general Harrie Innes, after the said desertion of the said Serjeant James M'Guire, and whilst he so continued such deserter as aforesaid, knowingly signed and gave three several false certificates to the clerk of the cheque of his majesty's dock yard at Chatham, relating to the absence of the said Serjeant James M'Guire, in breach of the third and fourth articles of the thirteenth section of the rules and articles for the better government of his majesty's marine forces while on shore.

“ That the said Lieutenant-general Harrie Innes, after the said desertion of the said Serjeant James M'Guire,
and

and whilst he so continued such deserter as aforesaid, knowingly made divers false weekly returns relating to the said Serjeant James M'Guire, in breach of the 7th article of the 13th section of the said rules and articles.

“ That the said Lieutenant-general Harrie Innes, after the said desertion of the said Serjeant James M'Guire, and whilst he so continued such deserter as aforesaid, knowingly and falsely signed two several lists, containing, amongst other things, an account of the subsistence of the said Serjeant James M'Guire, and thereby knowingly and falsely permitted subsistence for the said Serjeant James M'Guire to be drawn from the time of his said desertion up to the 1st of May then next following.

“ That the said Lieutenant general Harrie Innes did dismiss and discharge from his majesty's service Serjeant William Pinn, of the Chatham division of marines, without any order or authority from the lord high admiral, or commissioners of the admiralty for the time being for so doing, in breach of the second article of the twelfth section of the said rules and articles.”

Lieutenant-general Innes admitted that he was colonel commandant of the first, or Chatham division of marines, at the periods to which the said charges have reference.

Charles Bicknell, Esquire, solicitor to the admiralty, attending in order to conduct the prosecution, produced the following evidence in support of the charges.

Lieutenant colonel James Berkeley, of the royal marines was sworn and examined by desire of the prosecutor.

Q. Was he on the recruiting service in the month of February, 1800, at Northampton?

A. He was.

Q. Was Serjeant James M'Guire, of the tenth company of marines, employed by him on the recruiting service in the month of February, 1800, at Banbury?

A. He

A. He was employed under his command at Banbury, and absented himself from that place, as he was informed by a letter he received from the corporal of the party, dated the 11th of that month, saying that he, Serjeant M'Guire, had left that place, and had not left any subsistence for the party, and M'Guire has not since returned to the best of the witness's knowledge.

A letter from Lieutenant-colonel Berkeley, addressed "On Service, to Lieutenant and Adjutant M'Leod, Marine Barracks, Chatham, Kent," being produced by the prosecutor,

Lieutenant colonel Berkeley deposed that the said letter was written by him.

An extract therefrom, as far as related to the subject of the present inquiry, was read by consent of Lieutenant-general Innes as follows: viz.

"Northampton, 11th February, 1800,

"I am sorry to say I have some suspicion that Serjeant M'Guire has deserted. In consequence of my not entirely approving of his conduct, and considering him to be thoughtless and expensive at Banbury, I wrote to him to come to this place, and to leave the present month's subsistence for the party there, as well as the cash in hand, for carrying on the service, with Corporal Long (whom I have experienced to be trust worthy). Serjeant M. not arriving the day I expected him here, I wrote to Corporal Long, and have just had his answer, stating that Serjeant M'Guire had left Banbury (without mentioning one syllable that he had received any orders from me), pretending that he was going to a village in the neighbourhood, and that he had neither given him subsistence or cash to carry on the service. I have sent over to Corporal Long, and directed him to make every possible enquiry after him, and sincerely hope my suspicions may be unfounded. If he should not be discovered, I have only to request,
that

that the commanding officer will allow me to continue him open on my returns, until the end of the present month, *for which he is paid*, which will in *part* reimburse me the cash he has carried off."

Q. (By desire of the prosecutor to Lieutenant-colonel Berkeley.) Did he receive any answer to that letter? and if he did, from whom?

A. He certainly did receive an answer, but he cannot charge his memory by whom it was written. He thinks by one of the adjutants.

Q. Does he recollect the purport of the answer?

A. Under very unpleasant family circumstances he destroyed all his public letters, and this was amongst them, not considering them of any use after his account was settled and balanced; but to the best of his recollection, the answer purported, either that he might bear the man on the strength of the party whilst there was a probability of his returning, or that he was not to bear him after the probability of his return ceased; he cannot recollect the date of this letter, but the probability is, he received it within a week after he had written his letter.

Q. (By the court) Did he receive the letter before he made up his next return?

A. He certainly did.

Q. At what time did he make out that return?

A. The return was made up to the last day of that month (February).

Q. (By desire of the prosecutor) Did the letter he received express to be written by the order of the officer commanding the division of marines?

A. To the best of his recollection it was an official letter, in the usual form, written by the adjutant, by the order of the commanding officer. Another letter was produced to Lieutenant-colonel Berkeley, which he admitted to be his writing, addressed on service, "to Lieute-

nant

nant and Adjutant M'Leod, Marine Barracks, Chatham," and a paragraph therefrom, as far as related to the subject of inquiry, was also read by Lieutenant-general Innes's consent, viz.

" Northampton, Feb. 18, 1800.

" I am sorry to inform you, that by a letter I have received from Captain Long, that Serjeant M'Guire is certainly deserted; as he learnt from a party of the 68th regiment that came to Banbury, that they met Sergeant M'Guire on the way to Liverpool, and dined with him; he had on his full uniforms and knapsack, and pretended he was going on the recruiting service."

Q. (By desire of the prosecutor.) Did he receive any answer to that letter?

A. Most probably he did, but he cannot recollect, it is so long since, and he received so many letters.

Q. After the receipt of such letter, as he supposes, he received, how long did he continue to bear Serjeant M'Guire on the strength of his party?

A. In consequence of a letter he received from Serjeant M'Guire, on the 4th or 5th of March 1800, dated from Dublin, stating his contrition for having absented himself; that he had no intention of deserting from the service, and (to the best of his recollection) that he would return, if he would send him subsistence to bear his expences; he transmitted that letter to the adjutant at Chatham, for the commanding officer's information, requesting that steps might be taken for his being apprehended, if he did not return voluntarily. On the 9th of the same month, a letter was written to the witness by one of the adjutants, stating that M'Guire's letter was inclosed to the adjutant-general in Ireland, in order that he might be apprehended; this letter he received on the 11th of March, at Northampton, and he allowed twelve days for the letter going from Chatham to Dublin, the

letter coming thence to Chatham, and from Chatham to him at Northampton, which carried the time up to the 23d March, after which date he struck him off the strength of the party, finding he was neither apprehended nor returned voluntarily; and he should not have borne him on the strength of the party for subsistence in March, if it had not been for the letter he received from him from Dublin, from which he conceived there remained little doubt of his returning, or his being recovered to the service.

The official letter-book of the Chatham division of marines being produced, and admitted by Lieutenant-general Innes, an entry of a letter of the 9th of March 1800, was shewn to Lieutenant-colonel Berkeley, and he deposed that it was a copy of the letter he alludes to as having received on the 11th. An extract therefrom was read, by consent of Lieutenant-general Innes, as follows, viz.

“ Sir, *Chatham, 9th March, 1800.*

“ I have received your letter of the 5th instant, with its inclosure, from Sergeant M'Guire, and will take the necessary steps to cause him to be apprehended.

“ (Signed) **FREDERICK LIARDET,**

“ Captain and Adjutant of Marines.

“ Addressed to Lieutenant-colonel Berkeley, Northampton.”

Q. (By desire of the prosecutor to Lieutenant-colonel Berkeley.) To what time was Lieutenant colonel Berkeley allowed subsistence for Serjeant M'Guire, by the deputy paymaster in his account?

A. He was informed by the deputy paymaster in April last, that he had allowed him subsistence for Serjeant M'Guire, in a gross balance of an account of upwards of 1800*l.* up to the 1st of May 1800, but the witness did
not

not know, at the time he settled his account, that he was allowed such subsistence.

Q. (By desire of Lieutenant-general Innes.) Was it not the duty of the adjutant to enter all letters ordered to be wrote by the commanding officer?

A. Certainly.

Lieutenant and Adjutant Robert M^cLeod, of the Chatham division of royal marines, was sworn.

Q. (By desire of the prosecutor.) Had he the business of the office of adjutant to transact in the month of February 1800?

A. Yes.

Q. Did he receive a letter, dated the 11th February 1800, from Lieutenant-colonel Berkeley? (being the letter already before the court, and which was shewn to the witness.)

A. Yes.

Q. Did he lay that letter before Lieutenant-general Innes in order to take his directions respecting it?

A. He either did, or read it to him.

Q. Does he recollect what orders he received from Lieutenant-general Innes, on communicating that letter to him?

A. He cannot say that he does.

Q. Does he recollect what answer was written to it?

A. He does not.

Q. Did he write an answer, or was any answer to that letter written to Lieutenant-colonel Berkeley?

A. An answer might have been written, but he does not recollect writing any himself.

Q. If any official answer had been written, would it have been written by him, or by the other adjutant at Chatham?

A. Yes, most likely by one of them.

Q. If any official answer had been written to that letter, ought it not to have been entered in the letter book?

A. It certainly ought.

Q. Is there any such entry of an answer to that letter?

A. It does not appear to have been entered.

Q. Does he recollect receiving a letter of the 18th February, from Lieutenant-colonel Berkeley, addressed to the witness? (meaning Lieutenant-colonel Berkeley's letter of that date, already in evidence before the court.)

A. Yes.

Q. Did he lay that letter before Lieutenant-general Innes?

A. Yes; he read it to him.

Q. Did he receive any orders, in consequence of that letter, to strike Serjeant M'Guire off the strength of the division?

A. No.

Q. Does he know how long after the receipt of that letter Serjeant M'Guire was continued on the books of the division?

A. About three months, which he knows from the books, which he has since inspected.

Q. Was that done by Lieutenant-general Innes's directions?

A. He never recollects receiving directions from Lieutenant-general Innes, either to strike him off or continue him on.

Q. (By desire of Lieutenant-general Innes.) Does he know that when improper applications have been made to the commanding officer, that it has been customary to return no answer to such requests?

A. He has known such things happen.

Q. How

Q. How are the monthly musters made out, in what office, and by whom?

A. They are made out in the squad department, in which the adjutant has nothing to do; he has known them made out by a serjeant of the division (who kept a school) and in the divisional school-room.

Q. Who signs the certificates of musters, previous to their being carried to the commanding officer for his certificate?

A. The adjutant.

Captain Frederick Liardet of the royal marines, being sworn, was examined by the prosecutor's desire.

Q. Was he adjutant at Chatham in the month of February 1800?

A. He was adjutant; and believes he was at Chatham at that time.

Q. Does he recollect the two letters of Lieutenant-colonel Berkeley of the 11th and 18th of February 1800, (the letters already in evidence before the court,) being in the adjutant's office, or any answer being returned to them?

A. He cannot positively swear, or recollect, that he ever saw those letters.

Q. If any answers had been sent to either of those letters, by whom would such answers have been written?

A. It is the custom of the service for the adjutant to lay all such letters before the commanding officer, and to receive his directions; the adjutant then writes the commanding officer's directions thereon.

Q. (By desire of Lieutenant-general Innes.) Who signs the list of the men absent from muster, previous to the certificate being signed by the commanding officer?

A. The certificate of muster is made out from the muster sheets, and is signed by the adjutant, prior to its

being put into the hands of the commanding officer, as being a true copy of the muster sheets.

Q. Must not the commanding officer, from the nature of the service, trust to his subordinate officers for the correctness of the certificate of musters?

A. He must implicitly trust to them, for the books are so voluminous, that was he to be five days in the week in examining of them, it would be impossible for him to go through the business.

A letter from Lieutenant-general Innes, dated, 1st May 1800, to Evan Nepean, Esq. was now produced; and Lieutenant general Innes admitting the same,

An extract was read therefrom, by consent, as follows, viz.

*“ Marine Barracks, Chatham,
May 1, 1800.*

“ Sir,

“ I have received the inclosed letter from Serjeant M'Guire of this division, who deserted his Majesty's service in the month of February, when recruiting at Northampton, making away, at the same time, with upwards of three pounds of the public money, entrusted to his care for carrying on the service. I am to request their lordships will take such steps as they judge proper for apprehending him, as I certainly do not think proper to comply with any terms offered by so great an offender.”

George Palliser, Esq. clerk of the cheque at Chatham yard, being sworn, was desired by the prosecutor to produce the three certificates of musters of the Chatham division of marines, for the months of February, March, and April 1800; which having done, they appeared to be first signed by the adjutant, as examined and chequed by the muster rolls, and afterwards certified by Lieutenant-general Innes, the signatures to which certificates Lieutenant-general

general Innes admitted; and by the lists to which the said certificates of musters were annexed, Serjeant James M'Guire appeared to be stated in each "Recruiting."

Mr. Palliser produced another list, with a similar certificate annexed, taken on the 31st May 1800, signed, "John Barclay, commander," (who was explained to be Major-general Barclay, the second in command of the marines at Chatham, and who commanded in Lieutenant-general Innes's absence;) whereby it appeared that Serjeant M'Guire was therein stated as follows: "James M'Guire, serjeant, R. 1st May 1800, from recruiting," which R. Mr. Palliser explained to signify run or deserted.

Mr. Palliser also produced two lists of the effective non-commissioned officers and privates of the 10th company of marines, subsisted on shore at Chatham, with an account of the allowances they are entitled to; the one from the 1st of January to 31st March, and the other from the 1st of April to the 30th June 1800; both of which appeared to be signed by Lieutenant-general Innes, (which signatures Lieutenant-general Innes admitted,) by the deputy paymaster, and by him, Mr. Palliser; in the first of which Serjeant James M'Guire was charged, "James M'Guire, serjeant, from 1st January to 31st March 1800, 90 days, 7l. os. 7½d." and in the other as follows, "James M'Guire, serjeant, from 1st April to 1st May 1800, deserted from recruiting, 31 days, 2l. 8s. 5¼d." Mr. Palliser stated that these lists were formed from the certificates of musters, which he has just produced.

Samuel Moss, Esq. of the marine office in the admiralty, being sworn, was asked by the prosecutor's desire,

Q. Has he any weekly returns of the Chatham division of marines, from the 16th of February to the 4th of May 1800?

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A. Yes;

A. Yes; and he produced twelve weekly returns of the Chatham division, from the 16th of February to the 4th of May 1800; all which appeared to be signed by Lieutenant-general Innes; and which signatures Lieutenant-general Innes admitted.

Q. Has he examined those returns?

A. Yes; and in the first eleven there does not appear any serjeant returned as deserted, but in the last there appears one.

Captain William Seward of the royal marines, was sworn, and interrogated by the prosecutor's desire.

Q. Is he deputy paymaster of the royal marines?

A. Yes.

Q. Can he produce Lieutenant-colonel Berkeley's recruiting account, from 1st January to 31st December 1800?

A. Yes.

Q. For what period has Lieutenant-colonel Berkeley charged subsistence for Serjeant James M'Guire?

A. From the 1st January to the 23d March 1800.

Q. For what period did he give Lieutenant-colonel Berkeley credit for subsistence for Serjeant James M'Guire?

A. He gave him credit, in his general account, to the 1st May 1800.

The prosecutor now signified that he had laid before the court the whole of the evidence respecting Serjeant M'Guire.

Lieutenant-general Innes, stating that he should have asked further questions of Captain Liardet, had he been aware that he would not have been called again,

Captain Liardet, before sworn, was further examined by desire of Lieutenant-general Innes.

Q. Who

Q. Who makes out the weekly returns, and who checks and signs them before they are brought to the commanding officer for his signature?

A. The weekly returns are made out by the adjutant's clerk, then the adjutant looks over them, to see that they are correct; he then applies to the field officer on duty, to inquire if he is ready to hear those returns read over, and after they have been read over, in the presence of the field officer, the adjutant takes them to the commanding officer, and the field officer makes his report relative to their correctness, to the commanding officer, previous to his signature.

Q. By whom are the effective lists of subsistence brought to the commanding officer?

A. That being in the paymaster's department, he don't know.

Q. Is it the course of the service, or is it possible for him, from the duties he has to attend to, for the commanding officer to investigate the weekly returns before he signs them?

A. It is not the custom of the service, and he has no other way of ascertaining their correctness, than by the mode he has already pointed out, of the field officer comparing the returns with the abstract book, which contains all the casualties of the week.

The prosecutor now proceeded to the proof of the charge against Lieutenant-general Innes, viz.

“That the said Lieutenant-general Harrie Innes did dismiss and discharge from his Majesty's service, Serjeant William Pinn, of the Chatham division of marines, without any order or authority from the lord high admiral, or commissioners of the admiralty for the time being, for so doing, in breach of the 2d article of the 12th section of the said rules and articles.”

Mr.

Mr. William Pinn of Chatham, taylor, was sworn and examined by the prosecutor's desire.

Q. Was he a serjeant in the Chatham division of marines, in the month of January 1800?

A. Yes.

Q. Was he discharged, and if he was, when?

A. The witness referred to his discharge, which appeared to bear date on the 7th January 1800, and to be signed, "Harrie Innes, commandant, marines;" and the discharge stated it to be on account of long and meritorious services of twenty-three years and eleven months.

Lieutenant-general Innes admitted the signature thereto.

Q. (By desire of Lieutenant-general Innes to Mr. Pinn.) A report having been spread abroad that Lieutenant-general Innes had received a gratuity for his discharge, Mr. Pinn is desired to state, whether Lieutenant-general Innes ever did receive any such gratuity on that account, directly or indirectly?

A. He never did, upon his oath.

Lieutenant-general Innes admitted that he received no warrant or authority from the admiralty for the discharge of Pinn.

The evidence in support of the charges was here closed.

Lieutenant-general Innes signified that he should be ready to enter upon his defence, at the meeting of the court on Monday next; but a board for the passing of invalids of the army being appointed to meet in the room occupied by the court, on that day,

The court adjourned till Tuesday next, at eleven o'clock in the morning,

Tuesday, 8th June 1802,

The court being met pursuant to adjournment,

Lieutenant-general Innes entered upon his defence, as follows, viz.

GENERAL

GENERAL INNES'S DEFENCE.

“ After having served my king and country above forty-seven years as an officer, if not with particular distinction, yet, I trust I may be permitted to say, without stain, in either a military or moral point of view, I am at length brought to a trial, to answer for the neglects, errors, or omissions of those whose business it is at all times, and in every particular case, to take special care, that no certificate or document of any kind, which requires the being previously examined and properly checked, should ever be brought to a commanding officer for his signature, before it has undergone such regular course of office, but more particularly in the marine service, where, upon the slightest view, it must appear obvious to every man of business, that the complicated nature of the interior department is of such a complexion that it is morally impossible, and consequently would be unreasonable in the extreme, to expect that a commanding officer is to be held responsible for the regular and correct discharge of the duties of others, for whose neglects or errors, were he to be considered accountable, the situation of a commanding officer must be a very precarious one indeed. If those employed in the different departments under the commanding officer, are not particularly correct, he may unintentionally commit himself every day. Every commanding officer must take it for granted, that such papers have been checked at the proper offices, are correct, and should they not be so, it is next to an impossibility he should discover where the error or deception lays. In an office where a man, so dangerous as the person I am about to describe, had so powerful an ascendant, no fraud, I may venture to assert, could have been committed without his knowledge, and in which he must not have been a principal actor. Had he acquainted his commanding officer
when

when any thing was going wrong, (which was his bounden duty to do,) he knew that his commanding officer's ears were always open to receive honourable information : but the detection of frauds was not calculated to promote the deeper and darker designs of so infamous a character. George Jewson, the person here alluded to, was a serjeant of marines, under my command, at Chatham, and employed by Captain Seward, deputy paymaster, as his clerk in the squad office, until the month of September 1800, when he deserted, taking with him 800l. of the public money, but being fortunately overtaken at Liverpool, just as he was upon the point of embarking for America, he was brought back to head quarters at Chatham, tried by a general court martial, and sentenced to receive eight hundred lashes, and to be drummed out of the barracks, and through the three towns, with a halter about his neck. After he had received five hundred and fifty, I was applied to by the lords of the admiralty for my opinion as to the propriety of remitting the remaining part of the sentence ; my answer was, that I thought the second, or ignominious part of the sentence, could by no means be dispensed with, and which was accordingly put into execution. While under cure, he told the surgeon, he had been informed by his friends, that he would be able to get back the remainder of the money he had robbed the public of, as they were not the identical notes, having previous to his caption changed them for other notes : and yet it is from a dependence and stress laid upon information, drawn from so corrupt a source, upon the deposition of a man who has so recently perjured himself, that I am brought before this court, to acquit myself of those crimes of which, I thank God, my conscience is not afraid. The first knowledge I had of the threatened investigation which has since taken place, was by two successive letters from Captain Seward, the
deputy

deputy paymaster, addressed to me in Devonshire, to which I paid so little attention, that I did not think it necessary, on that account, to hasten my departure before the expiration of my leave. Upon my arrival in town, I went directly to the admiralty, where I found, by Mr. Nepean, that information had been received, in consequence of which an investigation would take place; at the same time that gentleman was pleased to say, that the admiralty were satisfied with my conduct, or some such words, from which expression I might fairly infer that their lordships had, at that time, a confidence in the commanding officer, which they immediately afterwards seemed to withdraw, by their subsequent conduct towards me. The intended investigation, heretofore alluded to, as well as the mode in which it has been carried on, I shall now beg leave to explain, for the information of the court. Upon my arrival at quarters, which happened a few days after the conversation above mentioned passed at the admiralty, I found the divisional books had been carried away, in consequence of an order, directed to Major-general Barclay, second in command, during my absence, and put into possession of a clerk of the admiralty, who carried them to an hotel, where, for some time, they were in the power of the said deserter George Jewson, to do what he thought proper with; and this being done, without any communication being made to the commandant of the division, I trust such a proceeding will appear to the court to have a strong tendency to degrade the commanding officer in the eyes of those who had ever been used to look up to him with parental regard. Having now, in consequence of the investigation which has taken place, and the court having had before them the evidence in favour of the prosecution, I trust I shall find myself acquitted of the first charge, having never knowingly,

knowingly, at any time, put my signature to false returns.

“ Upon the subject of the second charge, that of my having discharged Serjeant Pinn, without any order or authority from the lords commissioners of the admiralty, and in breach of the articles of war; I cannot form my defence upon stronger grounds, than in simply relating the whole of that man’s story, together with the circumstances which led to his being discharged, which, whether right or wrong in the commanding officer, was totally inadequate to the reward he merited from his country, as Mr. Nepean, I suppose, when called upon, will be ready to testify. This man was the author of the answer to the inflammatory hand bill, thrown into the marine barracks, at the time of the mutiny, and from my recommendation at that time, to the committee at Lloyd’s, received from his country a reward of 60*l.* exclusive of which, he had served his king and country faithfully and honestly four and twenty years within a month. Taking all these circumstances together, I appeal to the justice of this honourable court, whether or not I stand justified, if not acquitted, of the second charge. But if this is not sufficient to exonerate me, I have to say that what is now imputed to me as a crime, has received the approbation of the noble lord now presiding at the board of admiralty; for when I waited on him in October last, I mentioned to him the discharge of this man, and the reasons for my so doing; his lordship’s answer was, you have done right; the admiralty had nothing to do with it. I have summoned the noble lord to give you an account of this himself, and I hope his memory will not fail him in recollecting the circumstance.

“ This, gentlemen, is my defence, in justification of my conduct, it is from your decision alone, that I can expect

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a recompence for the many anxious hours which this (I trust) unmerited imputation upon my honour has occasioned me.

“ Gentlemen, feeling myself called upon, in the last place, to express the high sense I have of the candour and justice which have so strongly marked the whole course of your proceedings, it is only left for me to say, that I look up to my judges as the guardians of that honour which, I trust, I have hitherto supported unsullied; and I shall conclude this address with assuring this honourable court, that I await their sentence with becoming cheerfulness and resignation.”

John Earl St. Vincent, first lord commissioner of the admiralty being sworn, was asked, by desire of Lieutenant-general Innes,

Q. Does his lordship remember when Lieutenant-general Innes mentioned to him, in October last, the discharge of Serjeant Pinn, and his reasons for so doing, that his lordship's answer to him was, “ You have done right, the admiralty had nothing to do with it ?”

A. He does not recollect the latter part of the question, but he recollects commending, in high terms, those who had been instrumental in quelling the mutiny. His lordship conceives he could not have made the answer alluded to, as the measure happened during the exercise of another board of admiralty, of which he was not a member.

Q. Does his lordship recollect saying, “ You have done right in discharging the man ?”

A. He has no doubt but he did say, that every thing that had been done as a reward to those who had been instrumental in quelling the mutiny was perfectly right, but as to particular words his lordship cannot recollect.

Q. (By the court.) Did his lordship, by his general approbation, approve of the discharge of Serjeant Pinn, respecting

respecting whom the charge is stated against Lieutenant-general Innes?

A. He cannot positively say that he recollects the particular discharge of Pinn being mentioned; but as he has before said, in all conversations respecting the mutiny, he approved of all rewards that had been bestowed on those who had been instrumental in quelling it, and to the utmost of his power he contributed to reward them.

Q. Was his lordship at all aware, that Serjeant Pinn had been very instrumental in quelling the mutiny, when the order for assembling this court martial was issued?

A. No, certainly not.

Q. Does his lordship think, that had the circumstance of Serjeant Pinn's meritorious conduct been known to the admiralty, that this particular charge respecting Serjeant Pinn's discharge would not have been brought against Lieutenant-general Innes?

A. He conceived it would have had considerable effect.

Evan Nepean, Esq. secretary to the admiralty being sworn,

Lieutenant-general Innes produced a letter, which he stated he had received from Mr. Nepean, relative to Serjeant Pinn, and

Mr. Nepean admitting the same to be his writing, it was read as follows: viz.

Dear Sir,

Admiralty, 23d May.

" I wish you could find out the person who prepared that excellent paper which you transmitted to me to-day, and if he should belong to the corps, to furnish me with the particulars respecting him.

" Believe me to be, dear Sir,

" Your faithful humble servant,

" EVAN NEPEAN."

Major-general Innes.

Q. (By desire of the prosecutor to Mr. Nepean.) Does he know the amount of bounty which was paid to persons entering into the marines in the year 1800, about the time Serjeant Pinn was discharged?

A. He should suppose about fifteen guineas, as far as he can now recollect.

Q. What was the amount of money asked for the discharge of a man from the marines about that time?

A. He thinks forty guineas, which was for the purpose of raising two men.

Mr. Bicknell begged to explain, that he did not mean any insinuation whatever against Lieutenant-general Innes by his proposing the above questions; but merely to shew the value of men to the service at that time.

Q. (By the court to Mr. Nepean). Does he know a man of the name of George Jewson, by person, writing, or character?

A. He never saw Jewson; he knows his character, having read the minutes of his court martial, but had never any communication with him until the charges were transmitted against Lieutenant-colonel Berkeley and others; and he thinks they were transmitted not directly to him, but to some other person, and delivered to him officially; but he thinks they were signed by George Jewson.

Q. Was it in any degree in consequence of such communication transmitted by Jewson, that their lordships of the admiralty were induced to order this court martial?

A. The information of Jewson, with the result of the investigation, were referred to the crown lawyers (the attorney and solicitor-general), and counsel for the admiralty, and the prosecution was advised against Lieutenant-colonel Berkeley; the minutes of Lieutenant-colonel Berkeley's court martial were afterwards submitted to the

law officers, and the prosecution of Lieutenant-general Innes was advised.

Q. Does he recollect any conversation passing between him and Lieutenant-general Innes, on the General's waiting on him at the admiralty respecting this business?

A. Yes.

Q. Does he recollect, in the course of that conversation, expressing any words to the following effect: "that the admiralty was satisfied with the conduct of Lieutenant-general Innes with respect to the present charges against the General?"

A. No; but he recollects upon Lieutenant-general Innes's waiting on him upon the business, saying that he despised the character of Jewson as much as any body, and that the admiralty was not disposed to think unfavourably of the General; but that having that information before them, and the result of the investigation, they felt it a matter of duty to order some inquiry.

Q. Were the law officers informed of the infamous character of Jewson, and the meritorious character of Serjeant Pinn, when they advised the charges being preferred against Lieutenant-general Innes?

A. He does not know? He has no immediate communication with the law officers.

Q. (By desire of Lieutenant-general Innes.) Has it not been the practice of the admiralty, when written complaints have been preferred against a commanding officer, to send such letters or papers to such commanding officer for his report thereon?

A. He does not recollect any case nearly similar to the present, excepting the case of General Wemyss, and he is disposed to think, in that instance, it was not sent to that general, but he is not quite confident on that point; upon general and ordinary cases it has been the practice.

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The court now called upon Charles Bicknell, Esq. the solicitor to the admiralty, who, being sworn, was asked

Q. (By the court) Were the law officers, or counsel of the admiralty, who were consulted upon the subject, informed of the infamous character of Jewson, and of the meritorious character of Serjeant Pinn, at the time they advised the charges being preferred against Lieutenant-general Innes?

A. When the information of Jewson came to the admiralty it was reduced into the form of an affidavit, and laid before the law officers by direction of the admiralty; they were apprized of the infamous character of Jewson, and advised an investigation to be made by the admiralty into the facts contained in the information given by Jewson. The admiralty directed an investigation to be made by Mr. Moss, of the admiralty, and Mr. Waters, of the marine pay office; and their report was laid before the law officers, in consequence of which a court martial was ordered on Lieutenant-colonel Berkeley, and afterwards on Lieutenant-general Innes. The meritorious conduct of Pinn was certainly not known to the law officers, nor to the witness, having never heard of him till his name was included in the charge.

Q. Who were the attorney and solicitor-general at that time?

A. Lord Ellenborough and the present attorney-general.

Q. As Jewson's testimony on oath was a principal inducement with the lords commissioners of the admiralty for ordering this court martial, why was he not called upon as witness on this trial by the prosecutor?

A. His character was so bad, that had it not been for the investigation which took place after he had given the information, and on which the courts martial were ordered, he does not think the courts martial would have been advised.

Lieutenant-general Innes concluded his defence with producing two letters, the one from Earl Spencer, and the other from Major-general Brownrigg, secretary to his Royal Highness the Duke of York, which being admitted by the prosecutor, were read as follows: viz.

“ Sir, *Cheltenham, 31st May, 1802.*

“ I have to acknowledge the receipt of your letter of the 29th instant, expressing a desire to have a testimony under my hand of your conduct during the time I presided at the admiralty; and in answer to it, I have no difficulty in declaring, that, to the best of my recollection, your conduct, as far as it came under my observation during that period, was such as might naturally be expected from an officer of long experience and disinterested zeal for the promotion of his Majesty's service.

“ I remain, Sir,

“ Your very obedient humble servant,

“ SPENCER.”

Lieutenant-general Innes.

“ Sir, *Horse Guards, 25th May, 1797.*

“ I have Field Marshal the Duke of York's commands to acknowledge the receipt of your letter of the 23d instant, with its inclosures, for which communication his Royal Highness desires that you will be pleased to accept his best thanks. His Royal Highness has felt great satisfaction at the highly praise-worthy conduct of the division of marines under your command in having, in such proper terms, evinced their detestation and abhorrence of the vile arts that are now practising by wicked incendiaries, with a view to shake the allegiance of the soldiery. But his Royal Highness trusts, that the honourable example set by the Chatham division of marines will be followed by every individual of their brother soldiers, and that the British army will, to the latest period, preserve its love

and attachment for their king and country, and that they will be as desirous to distinguish themselves for their loyalty, as they have ever been emulous to excel all other nations in courage, when opposed to the enemy.

“ I have the honour to be, Sir, your most obedient and very humble servant,

“ ROBERT BROWNRIGG.”

*Major-general Innes, commanding
Chatham Division of Marines.*

The court martial, after the most attentive consideration of the evidence applicable to the charges against Lieutenant-general Harrie Innes with respect to Serjeant James M'Guire, is of opinion, that Lieutenant-general Harrie Innes is not guilty of having knowingly made any false certificates, lists, or returns, as stated in the said charge, and the court doth therefore most fully and honourably acquit Lieutenant-general Harrie Innes of the same. And the court is further of opinion that the said charges are frivolous and vexatious.

With respect to the charge against Lieutenant-general Innes, of having dismissed and discharged Serjeant William Pinn from the service,

The court is of opinion, that the long service and very meritorious conduct of Serjeant Pinn, and the peculiar circumstances of the times, justified Lieutenant general Innes in a deviation from the 2d article of the 12th section of the rules and articles for the better government of his Majesty's marine forces while on shore, and the court doth therefore honourably acquit Lieutenant-general Innes of the said charge.

(Signed) W. SOUTER JOHNSTON, President.
 J. A. OLDHAM, Judge-advocate.

Admiralty-office, 18th May, 1802.

(A true copy.)

WILLIAM MARSDEN.

No. LXIV.

Sentence of the Court Martial appointed to try Colonel Debbieg, for writing several disrespectful and injurious Letters to the Duke of Richmond, as Master-general of the Ordnance, and Particulars attending the Case, in 1784. Referred to Vol. II. p. 76.

The court martial for the trial of Colonel Debbieg, being re-assembled at the Horse Guards, by his Majesty's command, the following sentence was read by the judge-advocate, who declared that his Majesty had approved thereof, and had directed that it be carried into execution.

The court martial, upon due consideration of the whole matter, are of opinion, that Colonel Hugh Debbieg is guilty of each article of the charge exhibited against him: viz.

Of "writing to his Grace Charles Duke of Richmond, Lennox, and Aubigny, master-general of his majesty's ordnance, his commanding officer, several unbecoming letters since the month of June last, containing indecent and disrespectful expressions towards him, and groundless and injurious imputations of partiality and oppression in the discharge of his duty as master-general of the ordnance, to the prejudice of good order and military discipline;"

And of "writing disrespectfully, in the month of August last, of the said Duke of Richmond, &c. master-general of his majesty's ordnance, his commanding officer, to Major general James Bramham, the chief engineer, and in terms obviously tending to depreciate the conduct of him the said master-general, in the opinion of the

the said chief engineer, and of the corps of engineers, to the prejudice of good order and military discipline."

In consideration of the high character of the said Colonel Debbieg, as an officer, and his meritorious services, which consideration alone could have induced them to give so lenient a sentence for crimes which they must conceive to be highly detrimental, and tending to produce the worst consequences to the service, they adjudge, that he, the said Colonel Hugh Debbieg, be reprimanded in open court, and that he do also make his submission to the Duke of Richmond, &c. master-general of his Majesty's ordnance, in the following terms:

"My Lord Duke,

"In compliance with the judgment of this court martial, I do declare my great concern that I should have made use of expressions in my correspondence with your Grace, my superior officer, which, in the opinion of the court, tended to the prejudice of good order and military discipline."

The president, Lord Howard, then addressed Colonel Debbieg as follows:

"Colonel Debbieg,

"In addressing myself to an officer of so long standing, and so distinguished as you have been for your meritorious services, it cannot fail to give me the sincerest concern to have it fall to my lot to convey to you a reprimand from the court martial before whom you have been brought.

"It is, Sir, by his Majesty's command, that I do so, Wherein, having consulted the court, I am to say to you, that they would have to dread the ill effects of such an unbecoming spirit as that which has so conspicuously shewn itself in your late correspondence, which they have had under their consideration, if they did not persuade

themselves, in regard to the dangerous tendency of such behaviour to his Majesty's service, that you will, upon cool reflection, think as they do, and hereafter regulate your conduct accordingly.

"The other part, Sir, of the judgment of this court, your submission to the Duke of Richmond, master-general of the ordnance, has been already read to you by the judge-advocate; and which, no doubt, you will immediately, and agreeable to that becoming deference due to their directions, proceed to comply with."

Colonel Debbieg then read the submission to the Duke of Richmond, as the court had directed, after which the Duke of Richmond addressed himself to the court as follows:

"The judgment of the court, in pronouncing every article of my charges well founded, and the imputations against me groundless, together with the observations which the court has made on the conduct I complained of, have, I trust, fully justified the necessity I was under of appealing to this tribunal.

"I flatter myself that, in carrying on this prosecution, I have not shewn a vindictive spirit; I hope it is not in my nature. The apology directed by the court I readily accept from Colonel Debbieg. I trust his future conduct will be regulated by the sentiments which the court has expressed on what is past, and I promise Colonel Debbieg that he shall never trace, in my behaviour, any ungenerous recollection of this transaction.

The judge advocate then informed Colonel Debbieg, that the sentence of the court having been complied with, he was released from his arrest, and then declared that the court martial was dissolved.

No. LXV.

SECTION I.

Case stated to Sir Charles Morgan Bart. Judge-advocate-general, and his Opinion relative to collecting the Votes of Members of a military Court Martial, as to awarding a Punishment, after the Prisoner's Guilt has been determined by a bare Majority—Discretion of the Court in calling Witnesses—Adjudging a Soldier to serve for Life in any of the Corps stationed abroad. Referred to Vol. II. p. 125. 204. 250.

Sir,

Bastia, January 22, 1795.

I have the honour to transmit the minutes of proceedings of a general court martial held at Bastia for the trial of William Coulther, of the 50th regiment, and Patrick Lawler, of the 11th regiment of foot, and I hope you will not think me troublesome in availing myself of this opportunity to request your opinion on the two following questions. The first has often been the subject of discussion at various courts martial, of which I myself have been a member: but though the deputy-judge-advocate at Gibraltar was an old practitioner in those duties, I never yet heard it satisfactorily explained. The second may be a new case.

Supposing, in collecting the opinions of the members respecting the guilt of the prisoner, his guilt be determined by a bare majority, are the minority, in this case, obliged to be directed by the majority, and to vote for the punishment to be awarded? or can they refuse to vote, under the plea of not having found the prisoner guilty?

Query I.
Vol. II.
p. 250.

SEC.

SECTION II.

Referred to Vol. II. p. 125.

Query 2.

The second question will be best explained by the circumstance that gave rise to it.

The prisoner's crime was for desertion to the enemy: when he was taken, a court martial could not be conveniently assembled, nor did an occasion then offer to examine, as is customary, into the circumstances. He was kept prisoner many months, in which period such changes took place, that when a court was convened, it was difficult to find witnesses to support the prosecution. The deputy-judge-advocate collected the best chain of evidence he was able, and having produced this to the court, closed the prosecution. The court here interfered. Some of the members happened, by chance, to know circumstances of which no mention had been made in the course of the prosecution. They insisted upon this evidence being brought forward, and directed the deputy-judge-advocate to summon a witness, whom they named, to give evidence to this point.

The deputy-judge advocate opposed this proceeding as extra judicial. The court were to give judgment from the evidence before them. They could not, in his opinion, call for new evidence, of which no mention had been made, nor to which was there any clue in the proceedings. It argued a pre-judging of the prisoner, was irregular, and contrary to their oath.

The court, however stayed the proceedings. The witness was summoned, and his evidence was of moment. And here the second question arises: had the court a right to order evidence to be brought forward of which no mention had been made in the course of the prosecution? *If it had appeared in the depositions of the witnesses examined*, that some part of the evidence wanted proof, or further elucidation, and that a witness was at hand to

give this satisfaction, the court might have the power to call this witness, but I should fancy, where nothing of this kind had appeared to the court, that their previous or casual knowledge of circumstances ought not to affect the interest of a prisoner on his trial. They are, by their oath, to give judgment according to evidence, and are supposed to be ignorant of the matter, before they enter the court. If it had appeared that the deputy-judge-advocate had suppressed any essential evidence, he stood responsible for the neglect; but after he had brought forward all he could collect, and had closed the prosecution, the court had nothing more to do than hear the prisoner's defence, and pass judgment from the evidence before them.

I wish I may have clearly explained myself on this point. Such a case may probably not occur again; but for fear it may, I shall be happy to be honoured with your opinion, that thence, in case it should, I may be directed in my future conduct.

I have the honour to be, &c.

(Signed)

JOHN DRINKWATER.

SECTION III.

Referred to Vol. II. p. 204.

Sir,

Bastia, January 29, 1795.

I beg pardon for being so troublesome, but as I have already taken the liberty of requesting your opinion in two points of military law, I shall avail myself of the opportunity to beg your opinion on a third. Is a court martial empowered, by the articles of war, to sentence a soldier to transportation; or, in other terms, to serve a certain number of years, or for life, in a regiment abroad? It is to be regretted, that the public service often obliges a commander in chief to press the duty of judge advocate upon individuals who are not altogether competent to
the

Query 3.

the functions:—in this predicament I find myself; and this circumstance must plead my excuse for asking your opinion on these three questions.

I have the honour to be, &c.

(Signed)

JOHN DRINKWATER.

Sir Charles Morgan, Bart.

Judge advocate-general.

SECTION IV.

Opinion of Sir Charles Morgan, Bart. on the foregoing Cases.

Sir,

Grafton-street, May 22, 1795.

I have been favoured with your letters of the 22d and 29th of January last, which accompanied the proceedings of a general court martial held at Bastia, for the trials of William Coulther, of the 50th regiment, and Patrick Lawler, of the 11th regiment of foot.

Query 1.
Referred to
Vol. II.
p. 250.

At your request I will not hesitate to give you my thoughts on the three points stated in your said letters. As to the first query, I have not any difficulty in answering, that such members of a court martial, whose votes have absolved the prisoner of the crime objected to him, ought not to be called upon to award *any* punishment which they cannot, consistent with reason or justice, do. The question of punishment addresses itself to those members exclusively who have found the prisoner guilty; but it may, perhaps, not be omits to intimate, if it should happen that the officers who compose the majority of the court, and who have concurred in the conviction of the prisoner, should differ in sentiment with respect to the degree of punishment, in such case the prisoner ought to have the benefit of a presumptive opinion of those members who have absolved him thrown into the scale with the votes of those who incline to the *lesser* punishment, for
prisoner,

otherwise the prisoner would be put in a worse situation than if those members had deemed him in some degree culpable. This appears to me consonant to equity, but does not rest upon my opinion merely; it is conformable to the practice which has invariably prevailed in every case that occurred within my experience.

Upon your second question I can furnish only one precedent in aid of my own opinion, in the single instance wherein the question has arisen. I think the court may exercise their discretion in calling any witnesses before them from whom they have reason to think the truth may be obtained, whether adduced by the prosecutor or not; but I should, in my private opinion, consider it as a very hard and improper exercise of that discretion, if, when a prisoner is standing upon his trial, they should adjourn to a distant day in order to give time for amassing a fresh witnesses. If any person at hand, and who can without delay be called upon, is supposed to be capable of giving material testimony, I have not a doubt that the court may require his attendance and examine him; nor does it appear to me that this will, in any respect, militate against the oath which they have taken, "to try and determine according to their evidence."

Query 2.
Referred to
Vol. II.
P. 125.

With regard to the third query I must refer you to the 8th section of the act for punishing mutiny and desertion, for the only case wherein provision is made for adjudging a soldier to serve for life, or for a certain term of years, in any of the corps stationed abroad, or in foreign parts; and I have heard it argued, and I think with reason, that the making of an express provision in the single case of desertion, affords a presumption that in other cases, with regard to which the act is silent, that authority does not exist. And, indeed, upon the supposition of its being permissible, so far as regards the single point of punishing

Query 3.
Referred to
Vol. II.
P. 204.

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an offender, to sentence him so to serve, it may be questioned, whether the court is competent to compel the governor or commanding officer of any other garrison or regiment to accept or enrol such delinquent.

Having obeyed your commands to the best of my power, I shall detain you no longer than to assure you of my being very truly, Sir, your most obedient and most humble servant,

(Signed)

CHARLES MORGAN.

*To Major John Drinkwater, Deputy
Judge-advocate, Bastia, Corsica.*

No. LXVI.

SECTION I.

Military Warrant, issued by a Commander in Chief, for carrying a Sentence of Death into Execution, adjudging the Prisoner to be shot. Referred to Vol. II. p. 275.

By the Right Hon. the Earl of Cavan, Major-general of his Majesty's Forces, and commanding in chief in Egypt, &c. &c. &c.

To Major-general Baird, Colonel of his Majesty's 54th Regiment &c. &c. &c.

Whereas by an act, passed in the forty-first year of the reign of our Sovereign Lord George the Third, entitled, "an act for punishing mutiny and desertion, and for the better payment of the army and their quarters," it is enacted,

acted, that his majesty may grant his warrant to the persons commanding in chief his majesty's forces, for convening, or authorizing any officer, not under the degree of a field officer, to convene general courts martial, for the trial of offences committed by any of the forces under their command :

And whereas by a general court martial legally assembled in the town of Alexandria, on the 23d day of April last, by virtue of a warrant, authorizing me to convene the same as aforesaid, Cochran Hamlam, private soldier in his Majesty's 88th regiment, has been found guilty of the crime of desertion, and has been sentenced to be shot to death :

And whereas I have found it expedient, for the good of his Majesty's service, to approve of the judgment of death, thus given against this prisoner, and to direct that the same shall be carried into execution.

I do therefore hereby require that you, Major-general Baird, do, on Wednesday next, the 5th day of May, between the hours of five and twelve o'clock in the morning, carry the said sentence into execution, by causing the said prisoner, Cochran Hamlam, to be shot dead ; and for so doing this shall be to you, and to all others concerned, sufficient warrant and authority.

Given under my hand and seal, at head quarters, Alexandria, this 4th day of May, in the year of our Lord one thousand eight hundred and two.

(Signed) CAVAN,

Major-general, commanding in Chief.

By his Lordship's command.

(Signed) S. J. POPHAM,

Captain, Secretary.

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SECTION II.

Military Warrant, issued by a Commander in Chief, for carrying a Sentence of Death into Execution, adjudging a Prisoner to be hanged. Referred to Vol. II. p. 275.

By the Right Hon. the Earl of Cavan, Major-general of his Majesty's Forces, and commanding in Chief in Egypt, &c. &c. &c.

To Colonel William Carr Beresford, Lieutenant-colonel of his Majesty's 88th Regiment of Foot.

Whereas by an act, passed in the forty-first year of the reign of our Sovereign Lord George the Third, entitled, "an act for punishing mutiny and desertion, and for the better payment of the army and their quarters," it is enacted, that his Majesty may grant his warrant to the person or persons commanding in chief his Majesty's forces, for convening, or authorizing any officer, not under the degree of a field officer, to convene general courts martial, for the trial of offences committed by any of the forces under their command :

And whereas by a general court martial, legally assembled by virtue of a warrant authorizing me to convene the same as aforesaid, Joseph Forster, private soldier in his Majesty's 61st regiment of infantry, has been found guilty of theft, and has been sentenced to be hanged until he is dead :

And whereas I have found it expedient, for the good of his Majesty's service, to approve of the judgment of death, thus given against this prisoner, and to direct that the same be carried into execution.

I do therefore require that you, Colonel William Carr Beresford, do, on Monday next, the 9th day of August instant,

instant, between the hours of five and twelve in the morning, carry the said sentence into execution, by causing the said prisoner Joseph Forster to be hanged until he is dead; and for so doing, this shall be to you, and to all others concerned, sufficient warrant and authority.

Given under my hand and seal, at head-quarters, Alexandria, this 7th day of August, in the year of our Lord one thousand eight hundred and two.

(Signed)

CAVAN, Major-general,
Commanding in chief in Egypt.

By his Lordship's command,

(Signed)

S. J. POPHAM,
Captain, Secretary.

No. LXVII.

General Orders, respecting a Military Execution. Referred
to Vol. II. p. 275, 276, 277.

GENERAL ORDERS.

*Adjutant-general's Office,
Alexandria, Egypt, May 4, 1802.*

The artillery, engineers, 26th dragoons dismounted, and the whole of the infantry, will parade at half after five o'clock to-morrow morning, on the low ground in rear of the regiment of Dillon, instead of the garrison parade, as directed in the general orders of the 28th ult. for the purpose of witnessing the execution of the prisoners now under sentence of death.

The general commanding expects that regiments and corps will, on this occasion, parade as strong as possible.

Five execution parties, consisting of a serjeant and 12 rank and file each, will parade at a quarter before five

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o'clock

o'clock to-morrow morning, at the provost martial's guard.

Four of these parties will be given by the 88th, and the fifth by the 61st infantry.

The provost martial will take the immediate command of these parties at their arrival at his guard, and will communicate their orders to them.

All the guards of the garrison and advanced posts, with the exception of the quarantine guard, those of forts Cretin, Caffarelli, Turk, and Cleopatra's redoubt, will leave their sentries at their respective posts, and repair themselves to the provost martial's guard, at a quarter before five o'clock, for the purpose of escorting the prisoners to the place of execution.

All these guards, as well as the execution parties, under the immediate direction of the provost martial, will be commanded by the field officer of the day, coming on duty, and will receive such further directions from him as may be necessary.

LINE ORDERS, *by Major-general Baird.*

The several corps of the line will parade to-morrow morning, at the appointed hour and place, three deep, but be prepared to form two or four deep as may be necessary, and they will draw up, so as to form the three sides of a square. The artillery, engineers, the dragoons dismounted, 10th infantry, and the right wing of the 61st regiment, forming the first or right face; the left wing of the 61st, the guards of the day, and the 88th regiment, the second or rear face; and the regiments of Roll, Dillon, Watevilles, and Chasseurs Britanniques, the third or left face.

The execution parties in divisions, preceded by a band of music, and a corps of drummers, with the provost martial on horse back at their head, will march in ordinary

time in front of the prisoners, the music playing the dead march in Saul.

The guards, formed in divisions also, will march in rear of the prisoners. The captain of the day will command the main guard, which will lead, and the other guards will follow in succession, according to the rank of their respective regiments.

The procession will come into the square from the rear by the right of the artillery, and the music and drums of each corps will beat to the slow march in Saul as the procession passes along its front.

The execution parties are to march along the front of the whole line and as far as the center coffin, where the three first divisions will halt, and wheel back on their right pivots in line. The fourth and fifth divisions will continue to advance until they can form opposite to the three first, by wheeling back into line on their left pivots.

The music will then cease.

The guards will march along the right face only of the square, and will form between the left wing of the 61st and 88th regiments, by dressing on their left pivots on the latter corps, and wheeling backwards on their left into line.

The officers commanding the guards must be cautious to preserve an interval sufficient for the division preceding them.

The band and corps of drums will be furnished by Dillon's regiment.

A CHRONOLOGICAL LIST of the principal Trials by Naval Courts Martial under the existing Laws; specifying the Nature of Charges and Offences, and the Purport of Sentences. The whole exhibiting an authentic Scale of Military Crimes and Punishments.
 Extracted from the Admiralty Records.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 3 -	1750 — Griffin, Esq.	Vice Admiral	Exeter -	Misconduct and neglect exhibited by Capt. Powlett	Partly -	Suspended from his rank during the King's pleasure.
— 12	— Robert Hook	Boatswain	Lyme -	Embezzlement of stores	Proved -	Dismissed the service
— 13	— Geo. Sommerville	Boatswain	Lyme -	Defertion	Proved -	Dismissed, and all his pay forfeited to Greenwich Hospi- tal.
March 27	1751 Peter Slater	Surgeon	Blandford	Writing malicious letters.	In part -	Dismissed his employment.
Nov. 28	— Samuel Ackman	Gunner	Sphinx -	Ill behaviour to the lieutenant	Proved -	Dismissed the service.
Jan. 7 -	1752 Tho. Fitzpatrick	Mast. at Arms	Surprize -	Suffering a prisoner to escape	Proved -	Dismissed his employment.
March 5	{ Tho. Saunders and Richard Wager }	Seamen	Savage (sloop)	Forcibly running away with a boat belonging to a smuggling cutter taken by the Savage	Fully against Wager—Defertion only agt Saunders	Wager to receive 200 lashes with a halter round his neck, and Saunders 50 lashes.
May 18 -	— John Pike	Boatswain	Ruby -	Drunkenness and bad behaviour to the lieutenant	Proved -	Dismissed his ship.
June 19 -	— John Rookey	Seaman	Unicorn -	Mutinous and Riotous behaviour, and extremely disorderly during the ship's voyage	Proved -	Thirty lashes alongside each ship in commission at the port, and 12 months confinement in the Marshalsea.
— 27 -	— Gardner	Lieutenant	Sphinx -	Negligent and disorderly behaviour to his Captain	Partly -	Reprimanded and restored to his duty,

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 1.	1752 — Powlett	Captain	Exeter	Several specific charges exhibited by Vice Admiral Griffin, of bad conduct in the East Indies, neglect of duty, contempt of authority, and disobedience of orders	No evidence produced -	No evidence whatever appearing to support the charges they were declared groundless.
Nov. 8.	— Joseph Stout	Boatsw. Mate	Weazel	Disobeying the master's mate's orders, and taking him by the collar	Partly -	Twelve lashes alongside each King's ship in Lisbon River.
March 11.	1753 — Scrope	Captain and the other officers	Assurance	Losing the ship in the Narrows	The master fell under part of the 22d article	Captain, and all the officers except the master, acquitted — The master adjudged three months imprisonment in the Marshalsea.
Sept. 3.	— Gamal. Nighingale	Lieutenant	Hind	Disrespect, disobedience, and contradiction to the captain's orders	In part, by not receiving his Captain's orders with his hat off -	Reprimanded.
Nov. 10.	— John Woodward	Seaman	Jafon	Mutiny, and desertion	Desertion proved, fedition partly	Twelve lashes alongside of each ship in commission at the port, and 12 months imprisonment in the Marshalsea.
Jan. 14.	1754 — Jasper	Captain	Prince Henry	Fraudulent charges in his account of resitting at the Havanna	Proved -	Dismissed his Majesty's service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 26. 1755	{ Isaac Portion } { Rob. Taylor }	Seamen -	Terrible	{ Theft and robberies in Portsmouth harbour - - }	Fully -	{ Each twenty lashes alongside of each ship in commission in Portsmouth harbour. }
May 13.	J. W. Short	Purser -	Mermaid	{ Neglect of duty and lying out of the ship - - }	Partly -	Reprimanded.
Dec. 21.	J. Carter Allen	Lieutenant -	Jason	{ Disrespect, and directing the wardroom stewards not to admit the captain's - - }	Partly -	Reprimanded.
[A 2] — 31.	Edmund Jessop	Surg. 1st mate	Jason	{ Calling the captain a scoundrel, and damning his blood on board - - }	Partly -	{ Dismissed from his employment. }
Jan. 18.	Edward Clarke	Captain -	Jason	{ Defaming Lieut. Allen, and treating him with cruelty and oppression - - }	Partly -	Dismissed the ship.
March 13.	Mariot Arbuthnot	Captain -	Gaurland	{ Twenty charges exhibited by the purser - - }	Frivolous and malicious;— except one, viz. carrying women to sea	Reprimanded.
May 1.	Wm. McKenzie	Purser -	Gaurland	{ Concealing from the captain embezzlement of stores after he knew it, and disrespect - - }	Partly, in not acquainting the captain of beer deficient -	To stand the loss of the deficiency of beer, and reprimanded.
— 2.	Thomas Golden	Seaman -	Centurion	{ Theft, and desertion from the hospital - - }	Fully -	350 lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
June 3.	1755 Wm. M'Kenzie	Purser	Gaurland	Drunkenness, contempt, and disobedience of the master's orders	Fully	Dismissed his ship.
July 21.	John Rawlinson	Lieutenant	Fougeuse	Plundering on board the Lys French ship of war	Fully	Dismissed the service.
Aug. 6.	Edward Eames	Master	Nottingham	Drunkenness and neglect of duty	Fully	Dismissed the service.
— 52.	John Smith	Lieutenant	Defiance	Bad conduct while he commanded the Lys French ship of war	Fully	Dismissed and rendered incapable of serving his Majesty.
Sept. 9.	James Spencer	Boatswain's mate	Nottingham	Sodomy	Proved	Twenty lashes alongside of each ship in Halifax harbour.
Oct. 1.	John Bilen	Seaman	Terrible	Defection	Fully	Death.
— 10.	Thomas Fuller	Midshipman	Chichester	Great misbehaviour to the lieutenant when in search of deserters	Fully	Degraded from the station of a midshipman, rendered incapable of receiving any preferment, and to be towed standing up in a boat, with his hands tied up to the sheers, and his sentence read alongside of each ship in Halifax harbour.
— 10.	John Payne	Seaman	Jamaica sloop	Mutiny and desertion	Fully	To suffer death.
— 20.	Lord H. Powlett	Captain	Barfleur	Separating from Sir Edward Hawke at sea, and returning into port	Partly	Admonished for his error.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 12.	1756 William Best	Master	Perret floop	Running her ashore on the sand head, misconduct and negligence	Fully	Dismissed the service, and imprisoned six months in the Marshalsea.
Feb. 21.	Francis French	Midshipman	Defiance	Sodomitical practices	Uncleannefs and scandalous actions	Three hundred lashes with a halter round his neck, and rendered incapable of serving.
— 26.	Wm. Burling	Marine	Eagle	Desertion	Fully	Two hundred lashes.
April 27	William Ruffel	Midshipman	Prince George	Desertion	Fully	Turned before the mast, and received 200 lashes with a halter round his neck.
— 29	William Phippard	Master	Seahorse	Letting men escape from the vessel on board of which he was sent to impress, and frequently getting drunk	Partly	Dismissed from the ship.
May 14	William Hobbs } Wm wiseman } Thomas Grey }	Seamen	St. George	Desertion	Fully	Five hundred lashes with a cat-o nine tails, to be divided at three different times alongside of such ships, &c.
June 25	William Meeks	Boatswain	Captain	Mutinous behaviour and drunkenness	Partly	Dismissed his ship, and degraded to serve in a sixth rate
— 30	Julian Legge	Captain	Shoreham	Purchasing more stores than were necessary, and making alterations in the ship	Partly, but no fraud intended	sol. adjudged to be flopt out of his pay for the use of Government.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 26	1756 { Ben. Gregory John Watson }	Seamen	Marlborough	Defertion - - -	Fully -	To suffer death.
Jan. 27	1757 Thomas Graves	Captain	Sheerness -	Having declined to engage a French ship, which by his own account appeared to be a homeward bound East India man - - -	Guilty of an error in judgment -	Publicly reprimanded and admonished by the court.
Feb. 25	— Richard Watkins	Captain	Blandford	Treating Rear Admiral Frankland in a contemptuous and disrespectful manner, and disobeying orders -	Partly -	Dismissed from the ship.
June 27	— Henry Bicks	Seaman	Royal William -	Sodomitical practices -	Uncleannefs and scandalous actions	Five hundred lashes, and towed ashore to the point with a halter about his neck, and a label expressing his offence.
July 14	— Robert Roddam	Captain	Greenwich	Lo's of the ship, in striking to a French 64, after an engagement - -	Discharged his duty	Honourably acquitted.
Aug. 15	— John Carter	Seaman	Tyger -	Author of several scandalous and seditious papers stuck up at the hospital Calcutta, tending to stir up mutiny in the fleet - -	Fully, but his youth considered -	Six dozen lashes.
— 31	— Robert Read	Seaman	Thetis -	Defertion - - -	Fully -	To suffer death.
Sept. 14	— James Mansfield	Seaman	Union -	Stealing 19l. 16s. from another seaman - -	Proved -	Four hundred lashes with a cat of nine tails.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 22	1757 Phillip Payne	Master	Bideford	Insolent and contemptuous behaviour to his superior officer	Fully	Dismissed the service.
Oct. 19	— Nicholas White	Surgeon	Kennington	Negligent in his duty, and using scandalous expressions reflecting upon Capt. Dudley Diggs, commander of the Kennington	Fully	Dismissed the service.
Jan. 21	1758 Fifteen Men	Seamen	Namur	Defection	Fully	To suffer death.
— 27	— Henry Nelson	Purser	Sunderland	Mal-practices, and defrauding the ship's company in serving 14 ounces of tobacco to the pound, instead of 16 ounces	Proved	Dismissed the service.
March 4	— Thomas Pye	Captain	Advice	Sundry charges exhibited by Mr. Frankland of irregular practices when commanding officer at Barbadoes	Partly	Reimburse Government the difference between 200l. sterling, and 200l. Antigua currency, the price of a schooner which he bought for the service.
June 20	— Nicholas Vincent	Captain	Weymouth	Keeping back in time of action with the French ships in the East Indies	Partly from error in judgment	Dismissed from the command of his ship.
— 22—27	— William Brereton	Captain	Cumberland	Ditto	Partly	Adjudged to lose one year's rank as a post captain.
July 3—6	— George Legge	Captain	Newcastle	Ditto	Partly	Cashiered.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 11	1758 John Blake	Seaman	Rippon	Detestable and unnatural crime with a she goat	Proved	To suffer death.
—	— Hugh Jackson	Seaman	—	Suspected of having written an injurious letter respecting Capt. Arbuthnot, signed All Hands	Proved	Three hundred lashes.
Jan. 1	1759 Joseph Bunce	Gunner	Swiftsure	Neglect of duty, and not taking care of the stores committed to his charge	Fully	Mulcted 12 months personal pay for the Chest of Chatham
—	— Wm. Thompson	Purser	Trial	Stopping the grog from 38 sick people by the surgeon's desire, without acquainting the captain, &c.	Partly	Reprimanded.
— 2	— Richard Bird	Seaman	Norwich	Attempting to desert by swimming on shore the 14th Nov. 1758	Proved to have been attempted on the 15th Nov.	Acquitted.
— 22	— James Aldred	Seaman	York	Attempting to rescue a man belonging to the Medway then in possession of Lieut Martin, by threats and knocking him down	Fully	Four hundred lashes.
— 29	— William Morris	Seaman	Sheerness	Desertion and taken on board a Spanish sloop at sea	Fully	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 12	1759 Richard Steel	Lieut. of Marines }	Grafton - }	Scandalous behaviour, selling his clothes, fash and sword, and keeping low company	Fully - {	Dismissed the service, and rendered incapable of any further employment.
March 27	Richard Beale	Lieutenant	Polacre - }	Indecent practices unbecoming an officer -	Fully -	Dismissed the ship.
May 26	William Lewis	Marine	Griffin -	Lieft - - -	Fully -	Five hundred lashes.
July 23	{ William Wright Charles Gordon	{ Surgeon's 1st Mate Surgeon's 2d Mate	{ Elizabeth Ditto - }	Cont mptuous behaviour to the 4th Lieutenant, and disobedience of orders -	Fully - {	Dismissed from their employment, and to serve as common seamen before the mast.
—	William Howson	Seaman	Norwich -	Desertion - -	Fully -	To suffer death.
Aug. 6	{ John Curtis John Murphy }	Seamen	Portland -	Desertion - -	Fully -	To suffer death.
Aug. 6	Elias Pomeroy	Master	Glasgow - }	For leaving his quarters and going below during an engagement with a French frigate - - -	Proved - {	Dismissed and rendered incapable of serving his Majesty, drummed on shore, and landed with a halter round his neck.
— 14	John Gazard	Seaman	Magnanime }	Refusing to obey a midshipman's orders -	Fully - {	Three hundred lashes at two distinct times.
Nov. 3	William Smith	Boatswain }	Diligence, sloop }	Opprobrious language to the lieutenant -	Fully - {	Dismissed from his employment and to serve as a common seaman.
— 6	Wm. Cleaver }	Master at Arms }	Rose - }	Purloining candles, being a seditious fellow and ignorant of military discipline	Fully - {	Broke from his employment, and put on board a King's ship to serve as landsman.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 6	1759 Patrick Wilson	Seaman	Defiance - {	Drawing a knife and attempting to stab the acting lieutenant - - - {	Fully -	To suffer death.
Jan. 10	1760 Thomas Slater	Carpenter	Arundel - {	Provoking speeches to, and contempt of Capt. Middleton {	Fully -	Mulcted of one year's personal pay.
Feb. 29	— William Lewis	Seaman	Sunderland {	Affaulting and dangerously wounding the boatswain {	Fully -	To suffer death.
May 1	— Nine People	Seamen	Magnanime	Defertion - - - {	Fully -	Seven to suffer death, and two of them 200 lashes.
— 15	{ Samuel Ellis and James Dickson	Pilots	Dolphin - {	Running the ship ashore on the Swin - - - {	Fully -	Mulcted of all their pay.
— 29	{ J. Butler	Lieut. commanding {	A Cutter - {	Contempt and disrespect to Capt. Affleck of the Launceston - - - {	Fully -	Dismissed the service, and rendered incapable of serving.
— 29	— Robert Powell	Master	Mermaid - {	Disobeying the captain's orders - - - {	Fully -	Dismissed from his employment, and turned before the mast.
June 13	— James Collins	Seaman	Royal Ann {	Mutiny and drawing a knife against the master at arms {	Fully -	Five hundred lashes.
— 16	— John Burgh and — Lloyd	Lieut. of Marines Surgeon {	Aetæon - {	Ungentleman-like behaviour to each other - - - {	Partly -	Mr. Burgh reprimanded, and Mr. Lloyd dismissed the ship.
— 17	— Thomas Bailey	Master	Aetæon -	Drunkness - - - {	Fully -	Dismissed the service.
— 28	— Owen Jones	Seaman	Thunderer {	Striking the corporal in the execution of his duty {	Fully -	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 14	1760 { Wm. Brown Thos. Dicker John Herbert }	Seamen	Swiftsure	Theft and desertion	Fully	To suffer death.
— 19	George Kittoe	Purser	Jason	Absence from his duty, causing John Cowley to be arrested for debt, and for not supplying the ship sufficiently with necessaries	Proved	Mulct'd one year's personal pay, and severely reprimanded.
— 28	Mr. Cumming	Lieut. of Marines	Warspight	Abusing the master in the execution of his duty, and striking him on shore	Fully	Mulct'd of six months pay, and to ask the master's pardon publicly.
Aug. 23	Thomas Twaites	Seaman	Royal William	Robbing men of clothes and other things on board the ship	Fully	Five hundred lashes.
Oct. 10	Joseph Millson	Corporal	Lynn	Drunkenness, neglect of duty, and mutinous behaviour	Fully	Five hundred lashes.
— 20	John Cooney	Seaman	Woolwich	Theft and desertion	Fully	Seven hundred lashes.
Nov. 14	George Vaughan	Purser	Porcupine	Drunkenness and disrespect	Fully	Dismissed the service.
Dec. 1	John Harris	Seaman	Devonshire	Selling stolen goods, knowing them to be such	Fully	Four hundred lashes.
Jan. 3	1761 John M'Intosh	Seaman	Nottingham	Neglect of duty, disobedience to command, and drawing his knife on a lieutenant of the ship	In part	Three hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 3	{ Sam. Goff and Thos. Hadley }	{ Carpenter's Yeoman serjeant of Marines }	Nottingham	Selling brandy on board the ship	Fully proved against the first man	Goff to receive 500 lashes, and Hadley acquitted.
— 5	Henry Luter	Seaman	Valiant	Giving another seaman belonging to her a stab, of which he died next morning	Not guilty of murder	That the death of the man was occasioned by a knife in the hands of the prisoner, when he was attacked by the deceased; but that the prisoner was not guilty of wilfully putting him to death, but to receive 200 lashes for not throwing away the knife at the beginning of the quarrel.
— 9	John M'Dougal	Marine	Samur	Desertion	Fully	Five hundred lashes.
— 22	Tho. Nicholson	Seaman	Effex	Striking Mr. Barford, 4th lieutenant	Ditto	But as it appeared the prisoner was disordered in his senses, he was acquitted.
— 23	{ N. Goodinson Robert Cock }	Marines	Falkland	Stealing sloop clothes from the purser	Not proved against the first, but in part against the last	Fifty lashes for secreting the slops stolen.
— 30	John Kell	Boatswain	Valleur	Absenting himself from duty, and suspected of embezzlement of stores	Gully	Dismissed the ship, to serve as foremast man, and mulct-ed of six months pay.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 7	1761 { N. Goodinson } Charles Gosta }	Marine } Seaman }	Falkland - {	Having sold fopclothes which they took on board the said ship - }	Fully - {	Three hundred lashes to Goodinson, and on account of good character given the other offender to receive only 50 lashes at the gangway on board of the said ship.
— 27	- { Nat. Levi, alias } Geo. Cooper }	Seaman }	Devonshire {	Theft, and in particular for having stolen a pair of breeches and handkerchief }	Fully - {	Death.
— 27	— Nat. Hanfter	Marine	Penzeance -	Stealing one shirt -	Fully -	Five hundred lashes.
March 16	— John Harvey	Midshipman	Defiance - {	Breach of duty, robbery or embezzlement on board the polacre Diligence, a prize taken by the said ship }	Fully - {	Having sent articles to a considerable amount out of the prize, sentenced to forfeit his share of her, and degraded from being a petty officer in a King's ship, to receive 70 lashes alongside the men of war, having a halter about his neck during the punishment.
— 18	— George Hogg	Quarter Master }	Cygnnet - {	Attempting to murder lieutenant Anthony Jones of the said sloop with a half pike }	Fully - {	To suffer death at the yard arm of the Cygnnet.
April 4	— Peter Johnston	Seaman	Crescent - {	Deserting from her, and afterwards serving in a French privateer - }	Fully -	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 9	1761 Charles Dawson	2d Lieutenant	Thetis	Punishing the boatswain's servant without proper cause, and making use of threatening expressions to officers and men, to stir up mutiny, and behaving with cruelty and oppression on board	In part	Dismissed the ship.
— 10	Rich. Burdon	Seaman	Kennington	Defection	Fully	To suffer death.
— 16	Wm. Higgins	Seaman	Chichester	Defection	Ditto	To suffer death.
— 24	Samuel Thorne	Carpenter	Assistance	Drunkness and neglect of duty	Ditto	Dismissed from that ship, and rendered incapable of serving in any other as an officer.
May 20	{ Francis Lascoe Powlett	Lieutenant	Belliqueux	For disobedience to orders, and otherwise misbehaving to the captain	Ditto	Dismissed the ship.
June 8	John Dowling	Marine	Alcide	Neglect of duty on his post over the beer cask	Ditto	One hundred lashes.
— 15	Wm. Fairbrother	Seaman	Valiant	Mutiny	Ditto	To suffer death.
— 29	Paul Oldfield	Seaman	Namur	For the death of John Simms of the same ship	Acquitted	That the death of the man was an accident, occasioned by a fight between him and the prisoner.
July 2	{ George Newton Tho. Finley	Seaman Boy	Ocean	The unnatural and detestable sin of sodomy	Fully	Both to suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 2	1761 { Jof. Cornish Ed. Buckley Mich. Walfh	Corporals of Marines Boy	Reeve Tender	Assaulting lieutenant Richard Burrows, while on shore on duty	In part	Edward Buckley, the principal offender broke as a corporal, and to receive 500 lashes; Cornish as an accomplice 50 lashes.
— 4	John Wynn	Armourer	Launceston	Repeated drunkenness, and threatening to beat the gunner	Fully	Reduced as armourer, and to receive 300 lashes.
—	Henry Fryer	Master	Buckingham	Shooting Mr. Timothy Veale, 2d lieutenant of the ship, in the left thigh, with a pistol ball	Acquitted	The pistol going off by accident.
— 7	John Sterriot	Seaman	Prince Frederick	Striking Mr. Wm. Wilson, master's mate, and going from his duty at the watering place	Fully	To suffer death.
— 8	Js. McGourgh	Seaman	Thunderer	Stabbing another seaman in the back with a knife, of which wound he died	Fully	To suffer death.
Oct. 12	John Brown	Seaman	Trident	Seditious and mutinous expressions	Fully	Three hundred lashes.
— 16	Tho. Francis	Lt. Marines	—	Absenting himself from his duty, and letting the ship sail without him, and not returning agreeably to his leave	In part	Severely reprimanded.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 22	1761 John Shaw	Pilot	Looe	Violent expressions in a letter to Lieut. Daniel Marbeux	Fully	To ask pardon of the said lieutenant, and suffer six months confinement.
Nov. 18	— Dan. Marbeux	Lieutenant	Looe	Isolent and infamous expressions contained in a letter, relating to Capt. Penny his commander	Fully	Dismissed the service.
— 26	— Cha. Magrath	Seaman	Burford	Stabbing in the belly Mr. James Cole master's mate, of which wound he died	Fully	To suffer death.
Dec. 11	— { John Campbell Samuel Smith }	Boatswain Midshipman	Terror	Embezzlement of stores	Fully	The boatswain dismissed his employment, and mulcted of 12 months pay, and the midshipman to forfeit all his pay and to be drummed through the fleet with his hands seized on a gallows, and afterwards to serve before the mast.
Jan. 7.	1762 Jno. Campbell	Seaman	Torrington	Striking the boatswain of the ship	Fully	To suffer death.
—	— John Oide	Lieutenant	Stag	Taking the command from, and confining his captain	Fully	Dismissed from the ship, many circumstances appearing in the course of the evidence in his favour.
— 8	— Tho. Jacobs	Qr. Master	Newark	Found on board a ship, entered as mate by another name	Fully	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
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Feb. 4	1762 John Beazely Jn. McLeigh Wm. Forster John Moses Wm. Spence	Lientenant Master Lt. Marines Purser Surgeon Boatswain Gunner	Stag	Taking the command from, and confining their Captain Henry Angel	Proved	But, as it appeared these of- ficers met at the request of the late First Lieutenant for their opinions, they were all acquitted of any design of mutiny, and were adjudged to be severely reprimanded.
March 2	Henry Sandham	Lieutenant	Hind	Disobedience of orders, and assisting the desertion of three petty officers and a seaman belonging to the said ship	Fully	Dismissed the service.
[B] — 15	James Mathews	Mastr. at Arms	Trident	Concealing spirituous liquors and suspected of other crimes	Fully	Dismissed as master at arms, and to serve before the mast.
— 24	Sol. Spanton	Master	Fowey	Drunkenness, mutiny, and neglect of duty	Fully	Dismissed as a master, to serve before the mast, and render- ed incapable of ever serving as an officer.
April 2	Carey Rees	Boatswain	Swallow	Instigating the ship's company to mutiny	In part	Mulcted of six months pay.
— 7	J. Mundell	Gunner	Ætna fire ship	Breach of discipline and other misbehaviour	In part	Broke as a gunner, and to serve before the mast.
— 16	John Morgan	Master	Grenada Bomb	Treating Lieut. Dumaresque unbecoming the character of an officer	Fully	Broke as a master, and to serve before the mast.
— 17	Wm. Browne	Master	Thunderer Bomb	Drunkenness and neglect of duty in not striking down the ship's provisions, &c.	Fully	Dismissed the King's service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
May 1	1762 Thomas Parker	Purser	Rochester	Misdemeanors by having received 1432l. 16s. the property of some merchants upon freight, when the Captain of the ship was only entitled to such benefit by act of parliament, and refusing to deliver it up	Partly	Sentenced to be cashiered, and dismissed his employment, as purser of the Rochester.
— 13	— Martin Billen	Seaman	Newark	Caught in the abominable act of sodomy	Partly	To receive 1000 lashes.
June 22	{ — Geo. Mallin, John Quinter, Richard Butler, and Wm. Cotes	Seamen	Thunderer	Desertion from the ship while she lay in Lisbon River.	Fully	All sentenced to be hanged, the two last in consideration of good character recommended to mercy.
Aug. 2	— Symmons	Commander	Albany sloop	Not having done his utmost to destroy the enemy's flat-bottomed boats in Caen River	Not having used his best endeavours to execute the orders he was under	Dismissed from his command of the Albany.
— 22	— John Mallet	Serjeant of Marines	Thunderer	Behaving unbecoming that character in drinking with, and putting himself on a footing with private men.	Fully	Reduced, and to serve as a private.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 14	1762 James Campbell	Captain	Stirling Castle	Not performing his duty when under the command of Captain Harvey, in leading and covering the ships that were ordered to attack the Moro, by Sir Geo. Pocock.	In part	Dismissed his Majesty's service.
— 24	Wm. Newson	Captain	Panther	False musters, and receiving money for provisions of fictitious names on the ship's books; striking the master on the quarter deck, and lumbering the ship with articles of a private nature belonging to himself.	In part	Dismissed the service, but his case was recommended to their Lordships, not being able to mitigate the 18th Art. of War under which he fell.
— 27	Alex. Whitfield	Lt. Marines	Quebec	Drunkenness and scandalous behaviour	Fully	Dismissed the service, and rendered incapable of serving as an Officer.
Oct. 12	John Bryan, John Johnson, and John Brown	Seamen	Ocean	Feloniously stealing a purse of thirty-six guineas belonging to another man of the ship	In part	The first to run the gauntlet on board the said ship once, the second three times, and the last offender four times.
— 23	Robert Garbett	Boatswain	Spy, sloop	For attempting to commit sodomitical practices	Ditto	Dismissed the service, and to be publicly drummed on shore with general marks of ignominy.
Nov. 3	Richard Chilton	Seaman	Seahorse	Guilty of indecent practices	Fully	To be hanged.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 18	1762 { H. Mitchell, and Corn. M'Donald }	Seamen	Assistance	Sodomy	{ Actions, tending to that detestable crime, were proved - }	Punished with 500 lashes each, and towed ashore with hal- ters about their necks.
— 24	Patrick Brennan	Marine	Arethusa	{ Striking and insulting a ser- jeant of marines then in exe- cution of his duty, and be- having in a mutinous man- ner when brought to the gangway to be punished - }	Fully -	To suffer death.
Dec. 30	— Wm. Owen	Lieutenant	Richmond	{ Treating the Captain of the ship with contempt, disobey- dience of orders, sleeping on his watch, and drunkenness }	In part -	Dismissed the service.
Jan. 18	1763 Thomas Loake	Lt. Marines	Repulse	{ Allowing himself to be kicked out of a coffee house, exhib- ited by several marine offi- cers }	Fully -	Dismissed the service.
— 28	— John Lee	Master	Dreadnought	{ Neglect of duty, and making use of abusive language to the officers of the ship }	Fully -	Dismissed the service, and ad- judged to one year's impri- sonment.
June 15	— Thomas Lynn	Captain	Chatham	Disobedience of orders	Partly -	Degraded from his rank and placed the last on the list.
Aug. 6	— { And. M'Cal- lum }	Seaman	Yarmouth	Desertion	Fully -	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 17.	1763 Dennis Every	Commander	Happy sloop	Confining the Master without cause	Fully	Dismissed the service.
	1764 Robert Dugdale	Lt. & Commander	Magdalen schooner	Receiving on board provisions on freight	Proved	Cashiered.
— 20	{ Bryan Diggins Wm. Morris	Seaman Marine	Dispatch Tender	Desertion and running away with a boat	Fully	To suffer death.
						<i>Included in one sentence.</i>
				Receiving on board quantities of merchandize in the East Indies, and oppressive conduct	Fully	Cashiered and rendered incapable of ever serving.
June 27 July 1	Annesley Brown	1st Lieut.		Selling opium, and behaving like a pedlar or steward to a common trader	Fully	Dismissed from the service.
	Lewis Bourgeois	2d Lieut.	Panther	Contempt to first Lieutenant; drunk on his watch at one time, and sleeping upon it at another	Partly	Reprimanded.
	Jos. Garrow	3d Lieut.				
— 31.	John Robinson	Surg. Mate	Active	Contempt and neglect of duty, exhibited by Lieut. James Sutherland, at Jamaica	Fully	Dismissed from his employment, rendered incapable of ever serving, and sent home from Jamaica before the mast.
Oct. 29	Tho. Edwards	Seaman	Phoenix	Breaking into the state Room, and robbing a box of a quantity of money	Fully	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 4.	1765 Samuel Boyd	Gunner	Greyhound	Behaving with contempt to his Captain	Fully	Mulcted of one year's pay and reprimanded.
Jan. 27.	1766 James Cook	Master	Alarm	Contempt and disobedience of Captain Cotton's orders, and having been guilty of like crimes, tending to multiply, both before and after his confinement	Fully	Dismissed the service and rendered incapable of serving.
— 28	— John Fork	Lieutenant	Dreadnought	Behaving with disrespect	Proved	Suspended from his duty for six months.
Feb. 5	— Rowland Cotton	Captain	Alarm	Converting the King's stores to the use of a schooner, his property. Exhibited by the late Master	Partly	But as it appeared that the stores, though not expended, agreeable to the instructions, yet it was done for the King's service, the charge was therefore adjudged litigious and infamous, and Captain Cotton was most honourably acquitted.
March 29.	— Richard Collins	Captain	Weymouth	Delay in proceeding from the East Indies to England, whereby the Crown was put to great expence	Proved	Dismissed the service.
May 2.	— Alexander Carr	Boatswain	Greyhound	Striking the master's mate and using scurrilous language	Fully	Dismissed the service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 19.	1766 Samuel Boyd	Gunner	Greyhound	{ Giving opprobrious language and ill-treatment to the boatswain	Fully	Dismissed the service.
May 13	1767 H M 'Donald	Seaman	Firm	{ Drunkenness and mutinous behaviour	Fully	Five hundred lashes.
— 25	— Walter Dees	Gunner	Æolus	{ Getting drunk and beating the midshipman	Fully	Dismissed the service.
Nov. 23	1768 Tho. Odnell	Qr. Master	Mermaid	{ Forfaking his station when on watch, and desertion	Fully	To suffer death.
1769 Aug. 14	Dan. M'Carter	Seaman	Burford	{ For taking out of the Temeraire, a seaman's chest and breaking it open	Fully	Four hundred lashes.
Dec. 1	— Benj. Lavery	Boatswain	Swift	{ Fraudulently sending on shore some stores committed to his charge	Fully	Dismissed the service.
— 30	— John Carter	Master	Winchelsea	{ Taking upon himself to pilot the ship into Cadiz Bay, and running her upon a reef of rocks, so as to occasion the loss of her masts	Proved	Dismissed from his employment as a master.
Feb. 3	1770 Thomas Bruin	Seaman	Montreal	{ Stabbing Mr. Smith with a knife, so as to occasion his death	Fully	To suffer death.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 26	1770 Owen Jones	Master	Mermaid	Treating Captain Smith with contempt, aspersing his character, refusing to sign the monthly muster-books, and countenancing an illegal expence of stores	Partly -	Dismissed the service.
Aug. 4	— Giles Wells	Marine	Romney	Behaving in a most riotous manner when on shore on duty and putting a woman in fear of her life.	Partly -	Fifty lashes.
Sept. 17	— { Thomas Fitz-herbert	Captain	Adventure	Altering the steerage bulk-head, making money chest, and a large safe out of the King's store, and other ill-behaviour exhibited by the carpenter	Partly -	Reprimanded.
Nov. 19	— Tho. Davin	Gunner	Glasgow	For having, when on shore at Canfo, abused Lieut. Jenkins of the marines, with opprobrious language, and made a stroke at him with a large stick	Not cognizable by martial law	Discharged from the complaint made against him.
Dec. 22	— Jeremiah Styles	Seaman	Spy sloop	Throwing a shot at Lieut. A. Pye Molloy, and striking him therewith	Partly -	Eighty lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 28.	1771 Dennis Carty	Seaman	Edgar	Affaulting and flitting the nose of Daniel Lynch another seaman	Fully	Five hundred lashes.
— 28	{ Reverend Richard Green	Chaplain	Pr. of Wales	Behaving with contempt to Lieut. Lecke, his superior officer, using reproachful and provoking speeches	Fully	Dismissed from his office of chaplain, and rendered incapable of ever serving in that capacity.
July 5	Richard Jones	Parfer	Resolution	Scandalous and indecent behaviour, and fraudulent practices	Fully	Dismissed the service, and mulcted of all the pay due to him.
— 6	Lionel Hill	1st Lieut.	Comerfet	Concealing fundry boatwain's stores in different parts of the ship	Proved	Dismissed the service, but in consideration of his long services and former character, recommended to the Lords of the Admiralty for relief.
— 26	Anthony Gibbs	Lt. & Commander	Schooner Sir Ed. Hawke	Disobedience of orders, and suffering his Majesty's colours to be insulted and disgraced, by two Spanish Guarda Costas, whom he was prevailed upon by threats to accompany into the harbour of Carthage	Proved	Dismissed his Majesty's service during the King's pleasure.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 4	1771 Rich. Fynmore	Lt. Marines	Buckingham	Behaving unlike an officer and a gentleman, in receiving blows from Lieut. Dennis of the Marines, and refusing to fight him	In part, by receiving blows and returning them in his own defence	Severely reprimanded as falling under the 23d article of war. But in regard to the other charges, adjudged malicious, and that Captain Titchborne, who exhibited them, was much more culpable.
— 5	— Jas Titchborne	Captain of Marines	Buckingham	Treating Lieut. Fynmore of the Marines with frequent abuse and unofficerlike behaviour	Fully	Dismissed the service, as falling under 23d and 33d articles of war. But in consideration of his age, recommended for such favour as the Lords of the Admiralty thought proper to grant him.
—	— John Tyrrell	Surgeon	Lively	Drunkenness and neglect of duty, and otherwise behaving in a manner unbecoming his station	Fully	Dismissed the service, and rendered incapable of ever serving, as falling under part of the 2d, 21st, and 27th articles of war.
Dec. 16	— John Pidgeon	Seaman	St. Albans	Absenting himself without leave, and drawing upon John Curling, midshipman.	Fully	To suffer death. Falling under 22d article of war.
April 3	1772 Mr. Dennis	Lt. Marines	Buckingham	Behaving to Captain Dury in an insolent, threatening, and mutinous manner, and neglect of duty	In part	Adjudged unworthy of further preferment.

A CHRONOLOGICAL LIST OF TRIALS—continued.

(27)

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 29	1772 Thomas Owens {	2d Lieut. of Marines }	Nautilus - {	Absenting himself from his duty, and not proceeding to sea in the sloop -	Proved -	Reduced to half pay.
Aug. 19.	— John Palmer	Cook -	Southampton {	Having attempted the detestable crime of sodomy with the carpenter's servant -	Fully -	Dismissed from being cook, and rendered incapable of serving, to receive 200 lashes, and to be turned ashore ignominiously with a label on his back, &c.
Oct. 26	- { John Williams George Coulson	Boatswain Cook }	Scorpion - {	The former for abuse, and the latter for abuse and blows to Mr. Geo. Oakes, a midshipman of the Trident -	Proved respectively	Dismissed from their stations on board the sloop.
Dec. 4	- { Tho. Ogilvie Jas. Dunnovin	Purser's Steward Armourer }	Panther - {	The first for having in possession a quantity of rum, coffee, and chocolate, and the latter for clandestinely bringing it on board the ship -	Proved agt the former, not against the latter	Thomas Ogilvie to receive 50 lashes, and the armourer acquitted.
Jan. 13 Dec. 6	1773 { Twenty-eight Persons - }	Seamen }	Different Ships - {	Defertion, and absenting themselves without leave -	Proved -	Different sentences from 100 to 300 lashes.
May 6	— William Owen	Seaman	Albion - {	Having abused in the most offensive terms, Sir George Home, 2d lieutenant of the Albion -	Proved -	Adjudged to receive 50 lashes, and in the same sentence, two seamen adjudged to 3 months imprisonment, for prevaricating in their evidence.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. to Dec. } 1774	Eighteen Persons	Seamen	Different ships	Defertion	Proved	Fifty to 300 lashes.
April 23	John Pendergast	Boatswain	Sloop Tamer	Having behaved in an insolent and mutinous manner on the quarter deck to the master, exhibited by Captain James Montague	Fully	To suffer death, but on account of his appearance of insanity, recommended to mercy.
May 30	Jas. Drummond	Lieutenant	Seahorse	Treating the people inhumanly, drunkenness, and sleeping on his watch, and repeated insolence to Capt. Farmer	All proved except the first charge	Dismissed the service.
Sept. 7	Mr. Donadieu	Midshipman	Minerva	Mutinous behaviour	Proved	Discharged from the Minerva and imprisoned in the Marsalsea for four months.
Jan. 9	James Bignall	Gunner	Glasgow	Contempt and disobedience to his Captain's orders	In part	Mulcted of 12 months personal pay, and reprimanded.
— 10	William Malby	Captain	Glasgow	On a charge exhibited by the gunner for cruelty and oppression	In part	Dismissed from the command of his Majesty's ship Glasgow.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 27	1775 { Wm. Hunter Maltis L. Ryal }	Lt. & Com- mander Master	Gaspee Brig	Wounding John Lutty, sea- man, which occasioned his death, as he was attempting, with three other seamen, to desert from the brig with the boat	Proved	But as the four men were de- ferring with the King's boat, it was adjudged Lieut. Hun- ter, the commander, did his duty like a good officer in firing at them, and that the Master was justified in obey- ing his officer's orders, and were therefore acquitted.
April 29	— Richard Beale	Lieutenant	Mercury	Behaving in an ungenteel and tyrannical manner to Mr. Day, the Surgeon	In part	Dismissed the ship.
June 5	— Thomas Bishop	Captain	Lively	Charges exhibited by Vice Admiral Graves for neglect of duty, respecting money and effects saved from the wreck of a Spanish vessel	In part	Acquitted of acting intenti- onally to the prejudice of the King's service, or with dis- respect; and reprimanded for an error in judgment.
— 6	— Thomas Graves	Lieutenant and Com- mander, and the Officers and Men	Diana, schooner	Losing the schooner Diana by getting aground in action with the Rebels in Boston harbour	Acquitted	The Court of opinion, that Lieut. Graves behaved like a brave and gallant officer, and did his utmost to annoy the Rebels after the schooner was ashore.
— 8	— Wm. Wilkins	Lt. Marines	Boyne	Being very much in liquor and unfit for duty, when the marines were ordered upon service from Charlestown	Proved	Dismissed from his employ- ment as a Marine Officer on- board the Boyne.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
June 16	1775 James Scott	Lieutenant	Somerfet	Behaving with contempt to Captain Le Cras, by punishing one of his servants with a dozen of lashes on the backside, while the Captain was on board	In part	Dismissed the ship.
— 19	{ Captain, Officers, and Seamen of the	—	Kent	Running the ship into danger, by striking on a sunken rock near the Start Point	In part	{ The Captain and Seamen acquitted; Lieut. Newton and Mr. Brooking, the Master, dismissed from the ship.
Nov. 20	{ Francis Grant } Gordon	Captain	Argo	Ungentle treatment of the officers, provoking language and gestures, encouraging desertion, discharging men without the Admiral's order, and several other charges exhibited by Lieut. Ardesoif	In part	{ Dismissed from the command of the Argo, and mulcted of six months personal pay.
Feb. 19	1776 Thomas Henry	Lieutenant	Seahorse	Frequent drunkenness, disrespect of the Sabbath day, beating and flogging some of the men, and ill-treatment to the warrant and petty officers	Not proved	{ The prosecution adjudged groundless and litigious.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 21	George Farmer	Captain	Seahorse	Receiving on board at Surat, piece goods and indigo, and 36 bales of Seapoys clothing on freight. False muster, and several unofficer-like actions, exhibited by Lieut. Henry	The goods proved to have been received on board by order of Sir Ed. Hughes	Acquitted of all the charges, and the prosecution adjudged to have been dictated by a spirit of malice and litigiousness; but with respect to the mistake of rating on the books Geo. Wm. Farmer, the Court recommended Captain Farmer to be more attentive in future.
— 22	Walter Stanford	Seaman	Albion	Having a fourth time deserted	Fully	To suffer death.
March 23	William Hall	Master at Arms	Emerald	Selling liquor to the ship's company	Fully	Reduced from his station to serve before the mast, and rendered incapable of ever serving as a warrant officer.
April 3	Js. Shuttleworth	2d Lieut. of Marines	Hind	Leaving his duty at Antigua, and coming to England without leave	Fully	Dismissed the service.
May 23	David Cumming	Lieut. of Marines	Syren	Having shot, in a duel, Mr. Jos. Pennington, First Lieutenant of the ship	Not proved	Acquitted.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 15	1776 { Officers and Company }	—	Marlborough	Respecting the accident of the ship's having blown up in Portsmouth harbour	By the explosion of a quantity of powder concealed under the platform of the magazine	Thomas Rogers, the gunner, dismissed the service, and imprisoned one year in the Marshalsea, and John Curry, the gunner's yeoman, to receive 300 lashes, Lieutenant Boyne reprimanded.
Sept. 3	— Thomas Craig	Cook	Medway	Assaulting the person of John Pearce, seaman, and biting off the end of his nose	In part	Dismissed the service.
— 4	— John Hart	Ser. Marines	Alarm	Encouraging the Marines to sell their necessaries	Fully	Reduced from a sergeant to that of a private marine
— 21	— Neil Wauchope	Lieut. of Marines	Thetis	Insulting repeatedly Lieutenant Bayne, and stabbing him in the belly	Proved infamy	Discharged to head quarters, to be taken care of as insane.
Dec. 13	— Ford Foster	Master	Carcafs bomb vessel	Mutinuous and disorderly behaviour	In part	Dismissed the service.
— 16	{ John Graves Thomas Page Christian }	Lieu. and commander Acting Surgeon	St. Lawrence armed schooner	Respecting a duel on the 25th Sept. in which a wound was said to have been received by Lieut. Graves, which obliged him to quit the command of the schooner	Proved	Lieut. Graves dismissed from the command of the schooner, and Mr. Christian mulct- ed of 12 months pay, and dismissed the service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 15. } Dec. 17 }	1777 33 Persons	Seamen {	Different ships - }	Desertion - -	Proved -	From 50 to 500 lashes.
Jan. 22	Jas. Mallandine	Boatswain	Amazon -	Neglect of duty, and absenting himself from the ship	In part -	Mulcted six months pay.
— 24	Matt. Burwood	Gunner {	Thunder bomb vessel {	Abusive and mutinous behaviour to Lient. Newhill Eastwood of the said ship	Fully -	Dismissed his Majesty's service.
— 27	Rogers Curry	Surgeon	Carysfort -	Drunkenness and unfitness for duty	Proved -	Dismissed from his ship.
Feb. 6	R. Pickersgill	Lieutenant and commander {	Lion, armed brig - }	Drunkenness and other irregularities, on board and on shore	In part -	Dismissed from the command of the sloop.
— 19	Jas. Pearson	Serjeant of Marines {	Boreas -	Striking his superior officer	Not proved sufficiently	Acquitted, as the Court could not fully justify passing sentence of death.
— 21	Mr. John Brown } Officers and crew - }	Lieut. and commander - }	Tryal - }	Having lost and burnt the Tryal Schooner - -	Fully -	The Lieutenant and commander dismissed from his Majesty's service, and likewise Leonard Mosey, master of the said sloop.
March 13	Rich. Hawkins	Seaman	Boyne -	Theft - -	Proved -	Two hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 13	1777 A. I. P. Molloy	Captain	Thunder	Using scurrilous language, &c. to Mr. Richard Hancorne, late master's mate of the said vessel, and accusing him unjustly	In part	Reprimanded by the Court for the impropriety of his language.
— 14	Wm. Rogerfon	Boatswain	Tartar	Drunkenness and neglect of duty	Fully	Dismissed from his employment of boatswain, and not to serve in that capacity again, and to serve as seaman in any of his Majesty's ships.
— 31	Stair Douglas, Esq.	Captain	Squirrel	Having separated from several merchants ships sailing under his convoy	Not proved to be done intentionally	Acquitted. ——— Unanimously agreed, it was owing to the badness of the weather and neglect of the masters of ships under his convoy.
May 26	Edw. Jones	Serjeant Marines	Juno	Sedition, disobedience, drunkenness, &c.	In part	Reduced to a private, and to receive 100 lashes.
— 29	J. T. Duckworth And. Wilson and Crew	1st Lieutenant Gunner	Diamond	Murder of five seamen belonging to the Grand Duke of Russia Transport	Not proved	Acquitted of the charge acknowledged against them, relative to the firing of the guns on 18th January 1777.
June 3	Tho. Godwin	Marine	Diamond	Sleeping on his post	Fully	One hundred lashes.
— 6	Wm. Chamberlain	Boatswain	Diamond	Drunkenness and disobedience of orders	Fully	Dismissed from the ship, and rendered incapable of serving in that situation in his Majesty's Navy.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
June 16	1777 Wm. Anderson	Boatswain, and officiating Boatswain of the yard New York	Eagle	Embezzlement of stores	In part	Mulcted only one year's pay in consideration of his services and good character.
— 27	Launc. Butler	1st Lieut. of Marines	Bedford	Not returning at the expiration of his leave	Proved	Reprimanded by the Court for not informing himself of the time of his leave of absence.
— 30	Edm. Dod - Pilot, Officers, and Crew -	Lieutenant and Commander	Diligent	Loss of the vessel on the Gan-net Rock Ledge, in the Bay of Fundy	—	Acquitted.—The vessel's loss owing to the great rapidity of the tide, and a foggy dark night.
Aug. 14	Wm. Hodges	Serjeant Marines	Portland	Beating a marine, and disobedience of orders	Fully	Broke from serjeant, and reduced to a private marine.
Sept. 3	John Cox	Marine	Cygnets	Murder of Thomas Saunders, a marine of the said sloop	Proved	Acquitted in consequence of his having been attacked by him on his post, when centinel.
Oct. 8	Richard Hills	Surgeon	Hope	Absence without leave, and refusing to return to the ship	Proved	Dismissed from his Majesty's navy as surgeon.
— 17	Wm. Dominey	Seaman	Fox	Being found in arms when the ship was retaken by the Flora	Proved	To be hanged at the yard arm of the ship.
—	Fran. Bond	Carpenter	Diligence	Assaulting Mr. Wm. Dalby, midshipman of the said ship	Proved	Mulcted three months pay.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 31	1777 A. Cunningham	Lieutenant Marines	Cornwall	Abstenting himself from duty after embarkation from Chatham barracks	Proved	Dismissed from his Majesty's service.
Nov. 3	— Jon. Bear	Boatswain	Cornwall	Contemptuous behaviour to a Lieutenant of the said ship	In part	Severely reprimanded by the Court, and to ask the Lieutenant's pardon.
— 3	— J. Chapman	Boatswain	Deal Castle	Embezzling stores	Proved	Broke, and rendered incapable of ever serving in the navy, and drummed through the fleet with a halter round his neck.
— 13	— Abr. Turner	Private Marine	Hector	Striking the boatswain of the said ship	In part	Three hundred lashes.
— 22	— Bry. McGannon	Serjeant Marines	Nautilus	Drunkenness and mutiny	In part	In consequence of long confinement, only reduced to a private.
— 26	— { Fra. Reynolds and Crew	Captain	Augusta	Loss of the said ship by fire	—	Acquitted, as the ship caught fire in action.
Dec. 17	— David Seton	Gunner	Preston	Drunkenness and incapability of duty	Fully	Dismissed from a gunner in his Majesty's navy.
— 19	— Geo. Pollard	Lieutenant	Conqueror	Quitting the command of the Fanny Tender without orders	Proved	Dismissed from the Conqueror.
— 19	— Benj. Lockyer	Master	Jersey	Contemptuous behaviour to the Captain	Proved	Dismissed from the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 6	1778 W. A. Halsted	Captain	Jersey	Injustice, and not behaving as an Officer and Gentleman	Partly	Admonished by the Court; and other parts of the charges found to be malicious, ill-founded, and unsupported by evidence.
— 24 —	John Haill	Carpenter	Shark	Mutiny, neglect of duty, and disobedience of orders	Partly	Broke, and rendered incapable of serving again as Carpenter in the navy.
— 26 —	Richard Hodges	Boatswain	Shark	Ditto Ditto	Partly	Broke and rendered incapable of acting in the navy as Boatswain.
— 26 —	Edw. Norbury	Seaman	Shark	Having been concerned in drawing up, and getting the ship's company to sign a paper, tending to stir up a general mutiny in the ship	Fully	Five hundred lashes.
March 23	Rich. Clarke	Surg. Mate	Raisfonable	Abusing and threatening to beat the Gunner of the ship	Partly	Severely reprimanded by the Court, and to ask the Gunner's pardon.
— 25 —	James Scott Watkin Tench	1st Lieut. of Marines 2d Ditto	Nonfuch	Injurious representations against each other	Proved	Both reprimanded by the Court, and obliged to make concessions to each other publicly.
April 1	Thos. Donovan	Boatswain	Camel	Behaving with insolence to the Lieutenant, and wounding a sentinel placed over him	Proved	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 9	1778 James Johnstone	Boatswain	Martin	Neglect of duty and disobedience of orders	Fully	Dismissed the ship.
— 11	— Wm. Hewitt	Seaman	Æolus	Accidentally killing his Mes- mate by a blow on his side	Partly	Acquitted of the intention, but being in liquor at the time to receive 50 lashes.
— 23	— Wm. Prescott	Marine	Bristol	Sleeping on his post and be- ing drunk	Proved	In consequence of his former good character, to receive only 24 lashes.
— 24	— Richard Cort	Seaman	Russel	Threatening the Boatswain when in the execution of his office	Proved	Fifty lashes.
— 25	— Edw. Warman	Lieut. of Marines	Prince George	Absenting himself from duty	Proved	Dismissed from his Majesty's marine service.
— 27	— — Brown	Boatswain	Launceston	Indecent behaviour and dis- obedience of orders	Proved	Dismissed the ship.
May 4	— Wm. Swift	Seaman	Scorpion	Endeavouring to entice others to desert to the enemy	Fully	To be hanged by the neck at the yard-arm of the ship.
— —	— John Hill	Gunner	Lizard	Drunkenness and neglect of duty	Partly	Dismissed the ship and his em- ployment as gunner.
— 6	— Wm. Strange	Purser	Jersey	Making an improper use of the ship's provisions	Fully	Dismissed from his employ- ment as a purser in his Ma- jesty's service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
May 11	1778 Tob. Furneaux {	Captain, Master and the Pilot of {	Syren	Lofs of the ship	In part	Captain acquitted. Master and Pilot dismissed from the service, as the loss of her was occasioned by them.
— 9	— Knox	Lieutenant	Venus	Abstenting himself from his duty and ill-behaviour	Partly	Dismissed from being Lieutenant of the Venus.
— 12	— Geo. Pasmore	Master	Venus	Declining his office, and behaving with insolence to his Captain	Partly	Severely reprimanded by the President.
— 16	— Jos. Carmichael	Surgeon	Greenwich	Using contemptuous and menacing speeches	Partly	Dismissed from his employment as Surgeon.
June 8	— John Lorington	Gunner	Camelion	Drunkenness and neglect of duty	Partly	Dismissed the ship.
— 8	— John Wallace	Boatswain	Thames	Disobedience, neglect of duty, and Drunkenness	Fully	Broke and rendered incapable of ever serving again as Boatswain.
— 29	— Hugh Connel	Marine	Minerva	Leaving his post when sentinel	Proved	Three hundred lashes.
— 29	— James Hallum	Marine	Experiment	Sleeping on his post and stabbing his Officer	Partly	In consideration of his good character, only to receive fifty lashes.
— 30	— Francis Goold	Boatswain	Ambuscade	Drunkenness and neglect of duty	Fully	Broke, and rendered incapable of ever serving again as Boatswain.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 20	1778 Mr. Jas. Hubbard	Lieutenant	Druid	Drunkenness when on duty on shore	Fully	Dismissed the service.
Aug. 18	— Atkins Timms	Serjeant Marines	Ruby	Not returning to his duty at the expiration of his leave, drunkenness, riotous, and unofficrlike behaviour, and for taking a purse with seven guineas from one of the seamen	Fully	Reduced to a private marine, and rendered incapable of serving in a higher station, and to receive three hundred lashes.
— 25	— Wm. Brereton	Captain	Duke	Enquiry into his conduct on the 27th July, when Admiral Keppel's fleet was chasing and engaging the French	Much intoxicated on the 27th July	Dismissed from the command of the Duke.
Sept. 29	— David Greig	Purser	Leviathan	Disobedience of orders	Fully	Dismissed the service.
Oct. 3	— Nat. Crosby	Captain	Heart of Oak	False muster, and a variety of charges exhibited by the Master	Proved	Cashiered, and rendered incapable of serving.
— 19	— Wm. Hawkes	Purser	Porcupine	Neglect of duty, disobedience of orders, and disrespect to the Captain	Partly	In consideration of his being unacquainted with the customs of the service, only reprimanded, and to ask pardon in public court of Capt. Finch, and to do the like publicly on board the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 23	1778 Maurice Delgarno	Lieutenant	Carysfort	Disobedience of Captain Fanshawe's orders	Partly	Reprimanded, and recommended to pay in future more diligent attention to his superior Officer's orders.
— 24	Wm. Pearce	Seaman	Soleby	Deserting with the Barge	Fully	To be hanged.
Nov. 2	Thos. Hooper	Lieutenant	Ruby	Drunkenness	Fully	Dismissed from the ship and put upon half pay.
— 19	Wm. Ruffel	Lieutenant	Raisnable	Neglect of duty and disobedience of orders	Fully	Dismissed from the ship, and rendered incapable of serving as a Lieutenant for 12 calendar months.
Dec. 23	James Scott	Lieutenant Marines	Raleigh	Refusing to come upon deck after four or five messages from Lieut. Walbeoff	Partly	Dismissed from the service during his Majesty's pleasure.
— 31	Jos. Knocker	Pilot	Kite Cutter	Disobedience of orders, contempt, and mutiny	Partly	Twelve months imprisonment in the Marshalsea.
Jan. 7	{ The Hon. A. Keppel }	Admiral	Victory	Misconduct and neglect of duty on the 27th and 28th July 1778, in sundry instances, as exhibited by Vice Admiral Sir Hugh Palliser	Malicious and ill-founded	Fully and honourably acquitted of the several charges exhibited against him, and declared to have behaved as became a judicious, brave, and experienced Officer.
Feb. 11						
Feb. 2	C. H. Everitt	Captain Officers and Crew	Arethusa	Loss of the ship	—	Acquitted, the ship run on shore in chase of a French frigate, which he had engaged with great spirit.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 3	1779 John Nicholson	Gunner	Scarborough	Absenting himself from duty	Proved	Dismissed from his employ as a gunner.
— 3	James Brown	Surgeon	Lizard	Breach of the 2d, 19th, 24th, and 36th Articles of war	Partly	Dismissed the service and rendered incapable of ever serving in the navy as a Surgeon.
— 12	J. C. Hudson	Gunner	Zephyr	Drunkenness, insolence, and contempt of his superior Officer	Proved	Dismissed from his employment as a gunner.
— 19	Wm. Andrews	Pilot	Ariadne	Running the ship on shore	—	Referred by the Court to the consideration of the Trinity Board, as the Pilot alledged the sand shifted on which the struck and was lost.
April 12 May 5	Si. H. Pallifer, Bart.	Vice Admiral of the Blue	Formidable	Respecting the conduct and behaviour of Vice Admiral Sir Hugh Pallifer, upon the 27th and 28th July 1778, when in action with the French fleet	Acquitted	The Court was of opinion, that his conduct and behaviour on those days, stated in the charges, were in many respects highly exemplary and meritorious, and only chargeable with misconduct, from omitting to make to known the Admiral the disabled state of the Formidable—was therefore acquitted.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 5	1779 Jof. Percival	Gunner	Proteus	Breach of the 29th Article of War	Clearly proved.	Dismissed with ignominy from the King's service, and for ever rendered incapable of serving his Majesty, his Heirs and Successors.
— 21	Thos. Walbeoff	Lieutenant Officers and Crew	Diligent, armed ship	Loss of the ship in action with the Enemy	—	Most honourably acquitted, and for their gallant behaviour, the Court recommended the Commander, Officers, and Crew who stood by him, to the Commander in Chief.
Sept. 1	P. G. King	Lieutenant	Renown	Ordering the ship's company upon deck (in the Captain's absence) to sign an instrument, appointing an Agent for two prizes taken by the Renown's Tender	Partly	Dismissed the ship.
— 2	Francis Ryves	Lieut. of Marines	Savage	Sundry charges exhibited against him by the Captain	Not proved	Acquitted of all and every charge; part of them proved to be cruel, malicious, and without the least shadow of foundation.
— 7	Wm. Clifton	Serjeant of Marines	Lion	Drunkenness	Fully	Reduced to a private, and to receive 100 lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 21	1779 Geo. Escott	Boatswain	Nymph	Disobedience of orders and ill-behaviour	Partly -	Dismissed the ship.
Oct. 5	— John Maclelan	Surgeon	Egmont	Abusive and provoking language, when on shore, to his Captain	Proved -	Reprimanded by the Court.
— 8	— Thomas Palmer	Boatswain	Surprize	Absence from duty, and breach of the 2d, 22d, and 27th Articles of War	Partly -	Dismissed from his employment as Boatswain.
— 19	— Genj. Hurd	{ Master and Pilot - }	{ Keppel, armed brig }	{ Drunkenness, and acting contrary to orders }	Proved -	Dismissed.
— 26	— Mich. Tucker	Carpenter	Ostrich	Defection from the said sloop	Proved -	Dismissed from his employment.
— —	— Phos. Wood	{ Impressed Seaman }	{ Speedwell Tender }	{ Attempting to blow up the forepart of the deck of the Speedwell Tender, and to poison the company of said Tender }	Partly -	Three hundred lashes.
— 27	— Chas. Vaughan	3d Lieut.	Monmouth	Disobedience of orders and negligent performance of his duty	Partly -	Acquitted of the first part of the charge, and reprimanded for the other.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 5	1779 Edw. Thompson	Captain	Hyæna	Bringing home the Carysfort and Favourite sloop from Barbadoes without orders, and for taking some seamen belonging to the Vengeance from the hospital at that place	Partly	Adjudged to be reprimanded only, as it appeared to the Court, that the motives which induced him to leave his station at Barbadoes and return with the convoy to England, arose from a desire of doing service to his Country by securing the Trade, and not from private motives.
— 9	Thomas Geary	Marine	Hydra	Wilfully firing at Oliver Veal, serjeant of marines, on board the said ship	Proved	To be hanged at the Yard-arm, but in consequence of his former good character, the Court recommended him to mercy.
— 30	Wm. James	Master	Hound	For insolence and disrespect	In part	Dismissed from his employ in his present ship, but in consideration of his abilities recommended to serve in that capacity in any other ship.
Dec. 16	John Thompson	Boatswain	Emerald	For embezzlement of stores	Proved	Mulcted of the wages due to him, and rendered incapable of ever serving again in that situation.
— 21	{ Christ. Webb Turner	Purser	Beavers Prize	For disobedience of orders and contemptuous behaviour	In part	Dismissed for ever from his Majesty's service as a Purser.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 24	1780 { Wm. Brady { John Lary	Seamen	Queen	striking Lieut. Walter Hol- land of the Marines belong- ing to the ship	In part	Four hundred lashes each.
— 24	{ John Lane	Serjeant of Marines	Scarborough	Disobedience of orders and neglect of duty	In part	Reduced to a private.
— 27	Henry Wilson	Carpenter	Syren	Insolence and disobedience of orders	Proved	Broke from his situation as Carpenter of the ship, and to serve in the Carpenters crew.
— 28	— Gibson	Lieutenant Pilot and Crew	Jackall Cutter	The cause and circumstances of the Jackall cutter being run away with during the Lieutenant being on shore on duty	Partly	The Lieutenant reprimanded for his absence, and the Pilot and Crew not being accep- tary, acquitted.
Feb. 24	— Bonner	Serjeant of Marines	Stagg	Absenting himself from duty and mutinous behaviour	In part	To be reduced to a private, and receive three hundred lashes.
— 28	Sir J. Wallace	Captain Officers and Crew	Experiment	Loss of the said ship	—	Honourably acquitted, ex- cept the First Lieutenant, who quitted his quarters in time of action, and was much censured by the Court.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 2	1780 Philip Boteler	Captain Officers and Company	Ardent	Loss of the said ship, being captured by the French fleet	Proved	Dismissed from his Majesty's service, as it appeared to the Court he did not do his utmost to prevent her from falling into the Enemy's hands.
— 4	Rob. Devereux	Boatswain	Centurion	Defertion	Fully proved	To be hanged.
— 6	John Clark	Boatswain	Swift	Disobedience of orders and drunkenness	Fully proved	Dismissed from his employment as Boatswain.
— 6	Humph. Ray Mich. Mullaly	Marines	Magnificent	On a charge of murder	Proved	Both to suffer death.
— 10	Rich Pearson and — Piercy	Captains Officers and Crew	Serapis and Countess of Scarborough	Loss of the said ship in action with Paul Jones	—	Honourably acquitted, they having made a most obstinate defence against a superior force.
— 11	Chas. Hamilton	Captain	Champion	Not attending as a member at a Court Martial	—	Acquitted, as it appeared in evidence he was indisposed at the time of the Court Martial.
— 18	James Wood	Lieutenant	Renown	Disobedience of orders, and disrespectful behaviour	In part	Dismissed the ship.
— 18	John Taylor	Master	Bellisle	Disobedience of orders, neglect of duty, and insulting Lieut. Wm. Beviens of the said ship	Proved	Dismissed from his employment as Master, and rendered incapable of serving as an Officer again.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 27	1780 Sir Wm. Burnaby	Captain	Milford	Quitting the Intrepid, and re- turning into port, and not affording Lieut. Baker assist- ance in putting dispatches on board the Intrepid	In part	Reprimanded by the Court.
— 29	John Jamefon	Master	Camilla	Drunkenness and neglect of duty	In part	In consideration of his long services, only dismissed his present ship.
May 22	Max. Jacobs	Captain Officers and Crew	Defiance	Loss of the said ship	In part	The Pilot blameable for tak- ing the ship over the Bar of Tybee, and rendered inca- pable of serving as Pilot. The Captain culpable, and therefore dismissed during pleasure, and the Officers and Crew fully acquitted.
— 24	John Webber and James Knight	Boatswain Capt. Clerk	Blaft	Defertion	Fully proved	To be hanged at the Yard- arm.
June 14	John Boscawen Savage	Lt. Marines	Bedford	Absenting himself without leave, and disobeying the orders of the Admiralty Board	Proved	Dismissed his Majesty's ser- vice, but on account of his youth, recommended to the Admiralty.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 17	1780 Rodham Home	Captain	Romney	Firing into the Sartine cartel ship, by which several persons on board were killed and wounded	Not proved	Acquitted. The accident of firing into her, arose solely from the Sartine having hoisted a broad Pendant, contrary to custom, and assuming the appearance of a ship of war.
— 28	Thos. Carless	1st Lieut.	Royal Oak	Mutinous, contemptuous, and disrespectful behaviour	Fully proved	Dismissed from his ship, and adjudged to be sent home in confinement by the first King's ship; then enlarged and rendered incapable of ever serving again as an Officer in the Navy.
Aug. 1	Chr. Watton	Boatswain	Trepaffy	Embezzlement, drunkenness, and neglect of duty	Partly	Embezzlement of stores not proved, neglect of duty in part, and drunkenness fully proved; dismissed from his employment.
— 5	James Black	Boatswain	Intrepid	Absenting himself from his duty	Fully	Dismissed the ship, and rendered incapable of ever serving again.
— 20	Hump. Cowley	Carpenter	Exeter	Drunkenness and neglect of duty	Proved	Dismissed the ship.
— 21	Francis Ritchie } Mowat }	Lieutenant	Ranger	Neglect of duty and disobedience of orders	Proved	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 22	1780 John Joseph	Seaman	Foudroyant	Threatening to take away the life of Mr. Moody, his superior Officer	Partly	Three hundred lashes.
Oct. 18	James Gilchrist	Purser	Leith armed ship	Insulting Lieut. Sam. Goodson of said ship	Fully	Dismissed his Majesty's service.
— 24	Wm. Hilliard	Boatswain	Princessa	Drunkenness and neglect of duty	Proved	Dismissed his Majesty's Navy.
— —	— Pateman	Captain	Yarmouth	Withdrawing from his station in the line of battle, laying to windward of the Fleet engaged with the Enemy, and disobedience of signals	Partly	Dismissed his Majesty's Navy, but recommended to his Majesty's clemency, as it appeared it did not arise from Cowardice.
— 25	Nich. M'Kenzie	Serj. Marines	Oiseau	Drunkenness and insolence	Proved	Reduced to a private Marine.
Nov. 1	Christ. Haliday	Lieutenant	Worcester	Having laid several charges against the conduct of Capt. George Talbot of the said ship, respecting the York store ship	Partly	Dismissed the ship.
Dec. 30	Benj. Brofs	Serj. Marines	Shrewsbury	Theft, and other infamous behaviour	Fully	Reduced to a private, and to receive two hundred lashes.
March 2 Dec. 30	Twenty-three	Seamen and Marines	Different Ships	Desertion	Proved	From fifty to five hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 5	1781 James Home	Lt. Marines	Triton	For disrespectful behaviour to Admiral Sir George Rodney	Proved	To lose his seniority in the Marine Corps, and to take rank as junior First Lieutenant on this day.
— 18	Wm. Brannon	Seaman	Ajax	For mutinous behaviour	Fully proved	Five hundred lashes.
— 24	Wm. Augustus Merrick	Captain Officers and Crew	Incendiary Fire ship	Loss of the said ship	—	Acquitted, except Mr. Dan. Fea, Master, who appeared to be drunk and incapable of doing his duty, and therefore degraded from the rank of a Master in his Majesty's Navy.
— 25	Wm. Emes	Boatswain	Cumberland	For embezzlement of cordage	Proved	But in consideration of his former very good character, he is only mulcted three months pay.
— 26	John Swaddle	Pilot	Camel	Refusing to take charge of the ship, and absenting himself without leave	In part	To suffer six months imprisonment in the Marshalsea.
Feb. 5	Pasco Truscot	Carpenter	Vestal	Drunkenness and disobedience of orders	Proved	Dismissed his ship as Carpenter.
— 13	John Montray	Captain	Ramillies	Loss of the ships under his convoy	Proved	Dismissed from the command of the Ramillies.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 20	1781 Isaac Valiant	Captain Officers and Crew	Syren	Loss of the said ship	Proved	The Captain reprimanded, the Master to be imprisoned six months in the Marshalsea, and dismissed the Kings service, the Gunner blameable; the rest of the Officers and Crew acquitted.
March 1	Geo. Hayes Paul Tibbetts Wm. Loyal Benj. Cook and Daniel Protherd	Seamen	Sylph	Mutiny, and agreeing to take possession of the vessel and carry her to an enemy's port	Proved	All to be hanged, except Protherd, who was admitted King's evidence.
— 3	Wm. Garnier	Chaplain	Grafton	Respecting the discharge of four negro men	In part	Severely reprimanded.
— 17	Thoms Smith	Seaman	Belliqueux	Desertion, attended with aggravating circumstances	Fully proved	To be hanged.
— —	John Laughly Haram	Mastr. Mate	Merchant armed ship	Neglect of duty, and contemptuous behaviour	Proved	Disfrated from Master's Mate, and to serve before the Mast.
— 22	Samuel Vans	Lieutenant	Prs. Amelia	Neglect of duty, disobedience of orders, and contemptuous behaviour to his Captain	In part	Dismissed his employment in the Navy.
— 26	Wm. Perkins	Carpenter	Hornet	Neglect of duty, disobedience of orders, and disrespect to the Master	Fully proved	Broke and rendered incapable of serving again in the Navy.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 2	1781 Henry Petrie	{ Serjeant of Marines }	{ R1. Charlotte armed ship }	Striking Nicholas Le Bailley, Midshipman of the said ship	Proved -	To be hanged; but from certain circumstances arising, and no alternative but death in the 22d Article of War, the Court did therefore most humbly recommend him to his Majesty's mercy.
— 16	George Roads	Boatswain	Prudent -	Drunkenness -	Fully proved	Broke from the service.
— —	Daniel Hill	Master	Prudent -	Drunkenness, neglect of duty, and contempt of his Captain's orders -	Fully proved	Dismissed his ship and sent home in confinement, and rendered incapable of acting again.
— 17	Wm. Painter	Seaman	Shrewsbury	Murder of Mr. Joseph Kirkbride, Midshipman of the said ship	Fully proved	To be hanged at the yard-arm.
— 21	Samuel Graves	Captain	Danae -	Enquiry into his conduct respecting the outward and homeward bound trade	In part -	Dismissed from the command of the Danae.
— 23	John McCarty	Seaman	Sultana Cutter	Mutinous behaviour	In part -	One hundred lashes only, in consequence of his good character and his scull being fractured, when he attempted to escape from a French prison.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
May 25	1781 John. HaHum	Lieutenant	Cambridge	Detaining the wages of Dennis M'Guire, seaman of the said ship	Proved	Dismissed from his Majesty's service.
— 28	{ Matth. Squire Steph. Raines Alex. Agnew }	{ Captains	{ Ariadne Loudoun Fury }	Enquiry into their conduct in an action with three French ships, April 30, 1780	—	{ Captain Squire most honourably acquitted; Capt. Raines and Agnew found not to obey the commands of their senior Officer, nor to do their utmost to assist him, were both dismissed his Majesty's service.
May 20	— Joseph Busby	{ Surgeon's 3d Mate }	{ Tyger Hof- pital ship }	Sending a challenge to Mr. Joseph Gibson, Surgeon's 4th mate of the said ship	Proved	Dismissed from his employment.
—	— Wm. Pepple	{ Captain of Marines }	{ Nonfuch }	Absenting himself from his duty	Proved	{ But in consideration of his long services, only to lose one year's rank.
July 17	— Leonard Poter	Gunner	Cygnat	Drunkennes, neglect of duty, and contempt to his superior Officer	In part	Reprimanded by the Court.
— 20	— George Stewart	Seaman	Oifeau	Drunkennes and contempt to his superior Officer	Fully proved	Four hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
July 20	1781 Several Men	Seamen	Santa Monica	Mutiny	Proved	Sixty-four men to be hanged at the fore yard-arm on board different ships, and three acquitted.
— 25	Sam. Wickham	2d Lieut.	Lizard	Contempt and disrespect to the Captain on the Quarter-deck	Proved	Dismissed his Majesty's service.
— 30	John Hurst	Seaman	Santa Monica	Making a mutinous assembly in the said ship	Proved	To be hanged at the yard-arm.
Aug. 29	Arch. Carrol	Master	Valiant	Embezzlement of stores, &c.	Proved	Dismissed from the service.
Sept. 8	Stephen Argent	Seaman	Licorne	Drunkennes, mutiny, and contempt of his superior officer	In part	Two hundred lashes.
— 29	Wm. Evans	Seaman	Robust	Neglect of duty, and offering violence to Thomas Pearce Midshipman of the said ship	Proved	But in consideration of his having been on board the Robust two years without being brought to punishment and his good character, to receive only fifty lashes.
Oct. 3	And. Buchanan	Carpenter	Hind	Impertinent language to Lieutenant Hand of the said ship	Fully proved	Dismissed his Majesty's service.
— 10	Edw. Smith	Boatswain	Bellisle	Embezzlement of stores	Not sufficiently proved	Reprimanded by the Court.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 8	1781 David Ross	Maſt. at Arms	Arethufa	Drunkenneſs, diſobedience of orders, mutiny, and ſtriking Lieut. Ruddell of the ſaid ſhip	Proved	To be hanged at the yard-arm.
— 17	John Stuart	Lt. Marines	Martin	Drunkenneſs, mutiny, and abuſive behaviour to the Maſter of the ſaid ſhip	Fully proved	Broke, and rendered incapable of ever ſerving his Maſteſs, his Heirs, or Succeſſors.
— 19	Wm. Ground	Marine	Conqueſtadore	Kicking Ab. Jordan, Maſter at Arms of the ſaid ſhip	In part	Three hundred laſhes.
Dec. 5	Alex. Ferris	Seaman	Roebuck	Mutiny, and having thrown a quantity of ſhot overboard	Proved	Five hundred laſhes.
— 6	Thos. Trannell Robert Crew John Bengal John Kitchen John Coppinger Thos. Robinſon	Seamen	Cyclops	Forcibly taking the Cutter of the ſaid ſhip from the Midſhipman when they were ſerving guard	Fully proved	Thomas Trannell and John Coppinger to be hanged at the fore yard-arm; John Kitchen and Thomas Robinſon five hundred laſhes each; and John Bengal, having borne a very good character is ſtrongly recommended for a mitigation of his ſentence.
— 20	Wm. Mickleburgh	Seaman	Flying Fiſh	Deſertion, and ſerving as ſecond Captain on board a French Privateer	Proved	To be hanged at the yard-arm.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 2	1782 Peter Irvin	Marine	Alcide	Striking the Marine Centinel on Poop of the said ship	Proved	Three hundred lashes.
— 25	— Luke Finlay	Boatswain	Lark	Disobedience of orders, and insolence to Lieut. J. Law-son of the said sloop	Proved	Dismissed the ship.
March 13	— Rich. Brampton	Carpenter	Actæon	For drunkenness and disorderly behaviour	Proved	Dismissed from the service.
May 6	— Thos. Hitchcock	Lieutenant	Nonfuch	Contempt of his Captain's order and neglect of duty	Proved	Dismissed the ship, and judged from the wounds he has received unfit to go to sea as a Lieutenant.
— 8	— Aug. Market	Lieutenant	Warrior	Neglect of duty and disobedience of orders	In part	Dismissed the ship.
— 14	— Henry Perry	Boatswain	Dana	Absenting himself from his duty without leave	In part	Dismissed from his employment as Boatswain.
— 16	— David Morgan	Boatswain	Diomedé	Drunkenness and neglect of duty	Proved	Ditto.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
May 19	1782 Hamil Wood Ths. Crandon Jos. Marshall Francis Rowe Owen Cooper T. Splitman and 14 others	Seamen	Narcissus	Making several mutinous as-semblies, and uttering words of sedition, and endeavouring to persuade the ship's company to rise on Captain Edwards and his Officers, and to dispossess them of the command of the Narcissus, and to carry them into some rebel port	Fully proved against the six named, and two others	The six named to be hanged at the different yard arms of the Narcissus, and the body of Hamilton Wood to be hung in chains in the most conspicuous place; and one to receive 500 lashes, another 200 lashes, and 12 acquitted.
— 28	John Markham	Captain	Zebra	Firing into the Defiance, French Flag of Truce	Partly	Dismissed his Majesty's service.
June 22	Arch. Carrol	Master	Profelyte	Contempt to his superior Officer, neglect of duty, and mutiny	Partly	Dismissed his Majesty's service.
July 3	John Damarell	Boatswain	Ardent	Embezzlement of stores	Proved	Dismissed the ship.
—	John Osmond	Carpenter	Belliqueux	Disobedience of orders, and insolence to his superior Officers	Partly	In consideration of his good character, to serve in a less rate.
— 13	Nicholas Burn John McGill	Boatswain's mate Seaman	Prothee	Mutiny and disobedience of orders	Partly	The former to receive 500 lashes, the latter 300 lashes.
— 16	William Lewis	Surgeon	Rainbow	Contempt and disobedience of orders	Partly	Reprimanded by the Court.
Aug. 9	Thos. Dickinson	Boatswain	Seahorse	Mutiny and disobedience of orders	Partly	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 9	1782 Isaac Watson	Master	Manilla	Careless and negligent performance of his duty	Proved	Dismissed and rendered incapable of serving in the Navy as an Officer.
— 14	Adam Larimore	Carpenter	Quebec	Drunkenness, and absenting himself without leave	Proved	Dismissed his employment as Carpenter.
— 17	Dougald Gilbert	Midshipman	Sceptre	Drunkenness, mutiny, and embezzlement of prize goods	Fully	To receive fifty lashes.
— —	John Laiyl	Gunner	Medea	Drunkenness, embezzlement of stores, and neglect of duty	Proved	Dismissed the ship.
— 31	James Bannister	Gunner	Prs. Amelia	Drunkenness and disobedience of orders	Proved	Dismissed his Majesty's service.
Sept. 2	{ John Emory James Elliott }	Seamen	Profelyte	Mutiny	Partly	Five hundred lashes.
— 28	R. Simmonds	Lieutenant Officers and Crew	Pr. Edward	Loss of her, she being taken by some American prisoners on board	Culpable	Severely reprimanded for quitting the ship, having so many prisoners on board; and the Carpenter strongly recommended for his attention.
Oct. 17	James Hoy	Boatwain	Rotterdam	Disobedience of orders, drunkenness, and contempt to his superior Officer	Proved	Dismissed the service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 28	1782 Bates Glover	Master	Infernal	Embezzlement of stores	Fully	Dismissed from his Majesty's service, and to repay government for 28 gallons of rum he had, out of the wages due to him.
— 29	— Chas. Christian	Master	Barracouta	Neglect of duty and drunkenness	Not proved	It appeared to the Court that the prisoner had lately received several contusions on the head, and therefore considered an invalid, and incapable of acting as master.
Nov. 4	— Abel Dagge	Lt. Marines	Myrmidon	Mutiny and contempt to Lieutenant Thomas Pamp of said ship	Partly	In consideration of his youth and inexperience, to lose his rank, and to be placed the last on the list of Second Lieutenants.
— 8	— Benj. Edwards	Midshipman	Suffolk	Insolence and disobedience of orders	Partly	In consideration of his good character and long confinement, adjudged only to duty before the mast for the term of one month.
—	— David Coufson	Carpenter	Infernal	Disobedience of orders, disrespect, and striking Lieut. Thomas Richbull of the said ship	Proved	To be hanged at the Yard-arm.
— 24	— Thomas Caton	Serjeant Marines	Ajax	Desertion	Proved	Reduced to a private, and to receive three hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 3	1782 Henry Power	Lieutenant	Princeessa	Neglect of duty - -	Proved -	Dismissed the ship.
—	Marmaduke Price	Lieutenant	Duke -	Contempt to his Captain	Proved -	Dismissed from his Majesty's Naval service.
— 9	J. Fran. Barrett	Purser	Defence -	Disobedience of orders, and disrespectful and contemptuous behaviour to his Captain	Partly -	Severely reprimanded, and recommended to procure an exchange into another ship.
Jan. 1 } Dec. 24 }	Thirty men	Seamen	Different Ships -	Desertion, drunkenness, &c.	Proved -	Fifty to five hundred lashes.
Jan. 2 -	1783 Rich. Hobbs	Serjeant of Marines	Shrewsbury	Drunkenness and disobedience of orders - -	Proved -	Broke and reduced to a private.
—	Wm. Welsh	Boatswain	Shark floop	Embezzlement of stores	Proved -	In consideration of his former good character, to be mulct-ed only eight months pay.
— 4	John Haggiston	Seaman	Jackall cutter	Having been concerned in running away with the said Cutter, and carrying her to France - -	Proved -	To be hanged at the fore-yard arm.
—	Thos. Mullogh alias Murray	Seaman	Jackall cutter	Mutiny - -	Proved -	To be hanged at the fore-yard-arm.
— 6	Wm. Mitchell	Boatswain	Pluto -	Absenting himself from his duty, drunkenness, &c.	Proved -	Dismissed the ship.
— 23	Robert Richie	Mast's Mate	Gibraltar	Embezzling some Arrack supplied for the use of the said ship's company - -	Partly -	Dismissed his employ, and to serve ever after as a fore-mast-mate.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 23	1783 — Odbar	{ Serjeant Marines }	{ Cumberland }	{ Selling several of his necessaries to the private men, and stealing marine stores }	Partly -	Reduced to a private.
Feb. 1	— Lawrence Power	Boatswain	Martin -	{ Drunkenness and neglect of duty }	Proved -	{ Dismissed the ship and employment. }
—	— J. N. Inglefield	{ Captain Officers and Company }	{ Centaur }	{ Loss of the ship }	{ Used the utmost exertions to save the ship }	{ Acquitted.—It appearing to the Court, that their united exertions were so great and manly as to reflect the highest honour upon the whole, and left the deepest impression on the minds of the Court, that more could not possibly have been done to preserve the ship from her melancholy fate. }
—	— Thos. Grant	Gunner	Bloodhound	{ Drunkenness and neglect of duty }	Proved -	{ Broke from his employment as gunner. }
—	— Constan. Collins	Marine -	Nestor -	{ Suffering two prisoners to make their escape }	Proved -	Two hundred lashes.
— 19	— Rich. Daniel	Boatswain	Burford -	{ Drunkenness, disobedience of orders, and neglect of duty }	Proved -	Dismissed the ship.
—	— Wm. Stewart	Mast's Mate	Sultan -	{ Cruel treatment to George Crow, Purser's Steward of the said ship }	Fully proved	{ Disfrated, and for ever made incapable of serving in the Navy in any other capacity than a fore-mast-man. }

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 7	1783 Benjamin Lee	Mast's Mate	Marlborough	Riotous behaviour, and insulting Mr Hillman, 4th Lieutenant of the said ship	Proved	To be hanged at the Yard-arm.
— 16	John Oldham	Surgeon	Valiant	Sundry charges exhibited by Captain Goodall of the said ship	Proved	Dismissed his Majesty's service, and rendered incapable of ever serving his Majesty, his Heirs, and Successors.
— 24	Mich. Cobby	Surgeon	Daphne	Insolence and disrespect to Lieutenant Stephens of the said ship	Proved	Dismissed his Majesty's service.
May 17	Alexander Moore	Gunner	Cormorant	Drunkenness, neglect of duty, and desertion	Proved	Broke and rendered incapable of serving as an Officer again in the Navy.
July 25	Wm. Rofs	Boatswain	La Pegasse	Absenting himself without leave	Proved	Cashiered, and rendered incapable of ever serving again as a Warrant Officer, and to be imprisoned one year in the Marshalsea.
— 31	Chas. Penfold	Lieutenant	Tupassey floop	Disobedience of orders and neglect of duty	Fully proved	Dismissed his Majesty's service.
Aug. 15	Pat. Anderson	Boatswain	Camel	Insolence, contempt, and disobedience of orders	Proved	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 15	1783 Rich. St. John	Surg. Mate	Hermione	Contempt of Lieut. Cowan's orders	In part	Dismissed the ship.
— 18	— John Mitchell	Seaman	Chafer	Writing a mutinous and fedious Letter	Pully proved	To be hanged.
—	{ Mich. Stanhope Officers and crew	Captain	Lively	Loss of the said sloop	Did not do their utmost	The Captain and Lieutenant dismissed his Majesty's service, as it was proved they did not do their utmost to prevent her falling into the Enemy's hands.
Sept. 25	{ Wm. Jones and Rob. Carpenter	Seamen	{ Hero, an American Prize	Desertion and piratical proceedings	Proved	Both to be hanged at the yard-arm.
Oct. 15	— Morgan Powell	Gunner	Martin	Contempt and disobedience of orders	In part	Multed of six months pay, and reprimanded.
— 16	— John Barnsley	Lieutenant	Ariel	Contempt and disobedience of orders	Proved	Dismissed the ship, and multed one year's pay.
— 24	— Rich. Williams	Captain	Otter sloop	Oppression and abuse to Mr. Eugene Callaghan, Purser of the said sloop	Proved	Dismissed the command of the Otter.
Nov. 8	{ John Burn and Arthur Rice	Seamen	Adamant	Mutiny	Proved	Six hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 21	1783 James Shields	Sailmaker	Otter floop	Mutinous and seditious behaviour	Proved	But in consideration of the blows he received from the Lieutenant, to receive only fifty lashes.
— 27	— John Wardell	Master	Cyrus	Drunkenness and fundry other charges	Fully proved	Dismissed, and rendered incapable of ever serving again.
Jan. 20	1784 Philip Rickinson	Boatswain	Profelyte	Embezzlement of stores	Proved	Dismissed the service.
— 25	— John Conquer	Lieutenant	Magnanime	Drunkenness and disobedience of orders	In part	In consideration of the good character given him by his Captain, only reprimanded by the Court.
March 3	— Thos. H. Wilson	Lieutenant	Magnanime	Disrespect to his Captain, negligent performance of his duty, disobedience of orders, &c.	In part	Dismissed the ship.
— 4	— John Follie	Boatswain	Warwick	Beating and barbarously using Robert Tollshea, a seaman of the Daphne	Proved	Dismissed from his Majesty's service.
— 9	— P. Jub. Stephenson	Lieutenant	Magnanime	Various charges exhibited against him by Captain Thos. M'Kenzie, Commander of the said ship	Proved	Dismissed the ship.
— 10	— John Conquer	Lieutenant	Magnanime	Disrespect to his Captain, and neglect of duty	In part	Reprimanded.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 16	1784 John Briant	Boatswain	Chafer - {	Insolence and disobedience of orders	fully proved	Dismissed the service.
April 28	Thos. Rind	Surgeon	Bull Dog - {	Insolence and contempt to Lieut. Hesketh of the said sloop	In part -	Reprimanded.
— 29	John Cumming	Seaman	Trusty - {	Striking Daniel Ford, Boat swain of the said ship	proved -	To be hanged at the fore-yard-arm.
June 16	{ Wm. Wolseley Officers and Crew .	Captain	Coventry	Loss of the said ship	—	Acquitted.—The ship falling in with a fleet of French men of war in a fog, and could not possibly escape.
July 1	James Holland	Gunner	Champion {	Drunkenness and disobedience of orders	Proved -	Dismissed from his employ.
— 5	Charles Alexander	Surgeon	Zebra sloop {	On several charges exhibited against him by Capt. Pakenham, Commander of the said sloop	In part -	Reprimanded by the Court.
— 8	Lloyd Jones	Boatswain	Sphinx {	Drunkenness and neglect of duty	proved -	Dismissed and rendered incapable of ever serving again.
Aug. 17	John Nouns	Marine	Boreas - {	Mutinous and disrespectful language	In part -	Two hundred and fifty lashes, and to be drummed & turned out of the service.
Oct. 20	Wm. Richardson	Boatswain	Falcon sloop {	Disobedience of orders and disrespect to Lieut. Hollowell of the said ship	Proved -	Dismissed the sloop.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 2	1784 Thomas Affleck	Lieutenant	Winchelsea	Cruel, oppressive, and scandalous usage to James Reed, Carpenter of the said ship	Partly	Dismissed the ship, and reprimanded by the Court.
— 27	— John Prime	Lieutenant	Hope Cutter	False expenditure of stores, not accounting for some that were saved from the wreck of the Crocodile, and keeping false Journals	In part	Dismissed the command of the Cutter.
Jan. to Dec. 27	— Twenty-seven	Seamen and Marines	Different ships	Defection	Proved	From twenty-four to four hundred lashes.
Jan. 14	1785 Wm. Broughton	Boatswain	Nautilus sloop	Embezzlement of stores	Proved	Dismissed his Majesty's service, mulcted of all the wages due to him, and to be towed round the fleet from ship to ship, with a halter round his neck, and his sentence to be publicly read alongside each ship.
— 17	— Thomas Moffett	Boatswain	Fortune sloop	Abusing and striking William Bissitt, Midshipman of the said sloop	In part	Reprimanded by the Court, and to ask the Midshipman's pardon.
— 27	— Edm. Barker	Master	Hope Cutter	Embezzlement of stores, and breaking open a trunk saved from the wreck of the Crocodile	In part	Dismissed from the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities:	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 8	1785 John Hickey	Boatswain	Pylades	Embezzlement of cordage	Proved	Dismissed from his Majesty's service.
Aug. 1	— Carleton Smythies	Lieutenant	Janus	Disobedience of orders, neglect of duty, disrespect and contempt to his superior officer	Proved	Dismissed the service, and rendered incapable of ever serving his Majesty, his Heirs and Successors.
— 16	{ Wm. Skidmore } James	{ Master's } Mate of the	Unicorn	Wilful and malicious attempt to destroy one of the boats of the Falcon	Proved	To serve seven years in the Navy before he can now be made Lieutenant, and if he did not publicly beg pardon of Captain Berkeley, Commander of the Unicorn, to be rendered incapable of being employed in his Majesty's service.
— 22	— Wm. Wilson	Boatswain	Porcupine	Drunkenness and contempt to his Captain	Proved	Broke from his employment.
—	— Wm. M Gee	Gunner	Porcupine floo	Drunkenness	Fully proved	To be mulcted of his pay.
— 23	— Samuel Blow	Lieutenant	Sampson	To enquire into his conduct respecting the murder of Mr. James Walton, by Captain Douglas of the Marines	In part	Dismissed from his employment, as it appears he might have exerted his authority as first Lieutenant to prevent it.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 5	1785 { Ch Seymour } Lynn - }	Lieutenant	Pilot Cutter	On several charges exhibited against him by Mr. Robert Oliphant, Master of the said cutter -	Proved - {	Dismissed from the command of the said Cutter.
— 31	{ J Beardmore } Swan - }	Lieutenant	Sprightly Cutter	On a charge exhibited against him by the Hon. Leveson Gower, of false musters	Fully proved {	Cashiered and rendered incapable of further employment in the Navy.
Nov. 18	— David Wallace {	Serjeant of Marines	Bull Dog	Drunkenness, neglect of duty, and disobedience of orders	Proved - {	To be reduced to a private, and to receive 36 lashes.
— 31	— Edward Johns {	Boatswain	Rose -	Drunkenness and negligent performance of his duty	In part - {	But in consideration of his good character, only reprimanded.
— 30	— Thos. Moffatt {	Boatswain	Fortune -	Several crimes alleged against him by the Captain, Lieutenant, and Surgeon of the said sloop -	Fully proved {	To suffer death.
Dec. 7	— James Sullivan {	Seaman	Standard	Disobedient, contemptuous, seditious, and mutinous behaviour to Lieutenant Malcolm of the said ship -	Proved - {	To receive 300 lashes.
Oct. 5 } Dec. 28 }	— Several - {	Seamen and Marines	Different ships	Defections -	Proved - {	Three dozen lashes to three hundred.
March 28	1786 Rich. Ireland	Qr. Master	Powerful	Disobedience of orders and contempt to Lieut. Fry of the said ship -	In part - {	To be degraded from his present rating, and serve before the mast.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 13	1786 John McLaughlin	Boatswain	Brisk sloop	Embezzlement of Cordage	Proved	Broke and rendered incapable of ever serving in the Navy.
— 22	{ John Johnson Officers and Crew }	Lieutenant	Cyprusarmed ship	Loss of the said ship	Proved	The Lieutenant to be reduced from his present rank, to the junior Lieutenant in the Navy, and rendered incapable of commanding any vessel for five years, and the Master to be imprisoned in the Marshallsea one year, and for ever dismissed the service; the other Officers and Crew acquitted.
May 2	— George Stephens	Seaman	Thetis	Killing Anthony Bonney, seaman of the said ship	Proved	To be hanged at the yard-arm.
— 30	— Mich. Pyne	Boatswain	Scout sloop	Insolence and contempt to his superior Officer, and mutinous behaviour	Proved	Dismissed the service, mulcted of all the pay due to him, and to be towed round the fleet, and his sentence read on board each ship.
July 10	— James Connory	Master	Weazle	Going on shore contrary to orders, and detaining a boat	Proved	Dismissed the ship.
Dec. 12	— Edw. Johns	Boatswain	Rose	Insulting and abusing Matt. Tallock, Master of the said ship	Proved	Dismissed the service, and to be imprisoned 12 months in the Marshallsea.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 12	1786 Eugene Callaghan	Purser	Otter sloop	Neglect of duty and disobedience of orders	In part -	Dismissed his ship.
Jan. 15	1787 Thos. Crofton	Purser	Winchelsea	On a charge exhibited against him by the Commissioners for Victualling, for delivering into their office, forged papers to pass his accounts	Fully proved	To be imprisoned in the Marshalsea two years, and rendered incapable of ever serving again in the Navy.
— 26	John Kofs	Master	Winchelsea	For having caused several erasures and alterations to be made in the Log Book of the said ship	Fully proved	Dismissed his Majesty's service and rendered incapable of ever serving again.
4 Feb. 2	Geo. Coupland	Boatswain	Echo sloop	Embezzlement of stores	Fully proved	Dismissed his ship.
— 16	Chas. Thompson	Master	Spider Cutter	Neglect of duty	In part -	Dismissed the Cutter.
— 26	Geo. Rutherford	Surg. Mate	Winchelsea	Beating and ill-treating John Starkey, Boatwain of the Chichester	Proved	Dismissed the service, and imprisoned in the Marshalsea for three months.
March 2	John White	Acting Lt. and Commander	Vixen Galley	Desertion and taking with him articles of provisions, stores &c.	In part -	Rendered incapable of ever serving in his Majesty's service, his Heirs and Successors.
Aug. 13	Patrick White	Boatswain	Speedy sloop	Drunkenness, disobedience of orders, and contempt, &c.	Proved	Dismissed from his employ.
Sept. 8	John Richards	Carpenter	Amphion	Neglect of duty, and disrespect to Lieutenant Douglas of the said ship	Proved	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 26	1787 Matt. Jerrard	Lieutenant	Scipio	{ For neglect of duty and disobedience of orders }	{ In part - }	{ Dismissed the ship, but recommended to the Admiralty, as it appeared to the Court it proceeded from too indulgent a disposition. }
Oct. 2	— John Bullen	Master's Mate	Resource	{ Riotous and mutinous behaviour, taking Lieut. Ratsey of the said ship by the collar and striking him }	{ Fully - }	{ To be hanged at the yard-arm. }
— 4	— Edward Pooley	Carpenter	Bonetta	Contempt, drunkenness, &c.	Fully -	Dismissed his employment.
Nov. 12	— William Vale	Master	Ranger Cutter	Disobedience of orders	Proved -	Dismissed his Majesty's service.
— 15	— Thos. Bennett	Gunner	Astrea	{ Insolent and contemptuous behaviour to Lieut. Page of said ship }	{ Fully - }	{ Dismissed and rendered incapable of ever serving again. }
Jan. 15 } Nov. 15 }	— Twenty-eight	{ Seamen and Marines }	Different ships	Desertion	Proved -	Fifty to 350 lashes.
Jan. 12	1788 Edward Biddoe	Marine	Crown	{ Riotous behaviour, and striking the Serjeant of Marines }	{ Fully - }	{ To be hanged. }
Feb. 18	— Jos. M'Pherson	Boatswain	Astrea	Drunkenness	Proved -	Dismissed the ship.
May 21	— Isaac Coffin	Captain	Thistle	False musters	Partly -	{ Dismissed the ship, but it appearing no fraud was meant or happened, the crime of false musters was mitigated. }

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
May 31	1788 George Duffield	Marine	Porcupine	Deferting in the Long Boat of said ship, while centinel	Fully	Five hundred lashes.
June 2	— Wm. Wiley	Serjeant of Marines	Orestes sloop	l'heft	Partly	Reduced to a private.
Aug. 4	— Edw. Davis	Master	Scorpion	Neglect of duty, drunkenness, unofficer-like behaviour, &c.	proved	Dismissed the service, and rendered incapable of ever serving in it again, and mulct- of his pay.
— 26	— Samuel Leake	Seaman	Jupiter	Assaulting and insulting on shore, Mr. Jas. Buchannan, Surgeon of the Sybil	Fully	One hundred lashes.
— 28	— Nicholas Rogers	Carpenter	Aurora	Neglect of duty, contempt, disobedience of orders, drunkenness, and a breach of the 22d and 23d Articles of War	Partly	Dismissed the ship, and rendered incapable of ever serving again.
Sept. 12	— Wm. Henderson	Surgeon	Carysfort	Disobedience of orders, contempt, and disrespect to his Captain	Fully	Dismissed the service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 15	1788 David Wardrope	Surgeon	Phaeton - {	Charges exhibited against him by Lieut. Charles Maurice Stocker of the said ship	Proved - {	The Court of opinion, that he is fully convicted of drunkenness, of making frequent quarrels, of striking the two Lieutenants, and in consequence sentenced him to suffer death, at such time and place as the Commander in Chief might direct.
— 29	Jos. Anderson	Surgeon	Culloden {	Drunkenness, misbehaviour, &c.	Proved - {	Dismissed the ship.
Oct. 16	— Samuel Lake	Qr. Gunner	Jupiter - {	Disobedience of orders, contempt, and mutinous behaviour	Fully - {	Three hundred lashes.
— 28	- { William Wall John Lucas	Lieutenant } Lieutenant }	Phaeton - {	Several charges exhibited against them by Captain Geo. Dawson, Commander of the said ship	Partly - {	Dismissed the ship, as it appears they suffered themselves to be beaten and otherwise ill-used, without acquainting the Captain; and also, that they connived at and permitted repeated riots.
Nov. 7	— Geo. Dawson	Captain	Phaeton - {	Several charges exhibited against him by John Wilkie, Master of the said ship	Partly - {	Dismissed his Majesty's service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Nov. 22	1789 John Wilkie	Master -	Phaeton -	Neglect of duty, disobedience of orders, disrespect, and contempt to Capt. Dawson, Commander of the said ship, and sundry other charges	Partly -	Dismissed the ship.
Jan. 4 Nov. 22	Ten -	Seamen and Marines }	Different ships	Defection - -	Proved -	Three dozen to 350 lashes.
Jan. 12	1789 William Stamp	Pilot	Crown -	Suffering the ship to strike on a shoal off the North Foreland -	Partly -	Reprimanded, and to forfeit the wages due to him for his services on board the Crown.
— 15	Char. Thackeray	Lieutenant	Thorn -	Disrespect to his Captain, in calling him scoundrel and liar, and for neglect of duty	Partly -	Broke from the rank of Lieutenant, and to serve as a Midshipman.
— 17	{ Samuel Perkins Pritchard }	Master	Aetæon -	Disrespectful and contemptuous behaviour to Lieutenant Charles Craven, Commander of the Chichester, and retarding the service -	Partly -	Dismissed the ship.
March 11	— Hamilton Henley	Boatsw. Mate	Aetæon -	Embezzlement of stores	Proved -	One hundred lashes, and to forfeit the wages due to him.
April 20	{ George Dacres Clarke }	Lt. Marines	Ariel -	Quarrelling, fighting, and un-officer-like conduct -	Fully -	Dismissed his Majesty's service, but recommended to be put upon the half pay list.
— 21	— John Ingall	Purser -	Ariel -	Fighting and drunkenness	Fully -	Dismissed the ship.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
April 29	1789 { Thos. Fotheringham }	Carpenter	Brisk sloop	Contempt, disobedience of orders, and wantonly destroying the King's stores	Fully	Dismissed the ship.
Sept. 12	— Wm. Kearn	Seaman	Penelope	Abusing and striking several Midshipmen of the said ship on shore	Proved	To be hanged at the yard-arm, but recommended to mercy by the Court.
Oct. 21	— Jas. Fitzpatrick	Lieutenant	Blonde	Charges exhibited against him by Lieut. Wm. Charleton of the said ship, for unofficer-like conduct, &c.	Partly	Dismissed the ship, and to be placed the youngest Lieutenant on the list.
— 22	— Geo. Coltman	Surgeon	Blonde	On charges exhibited against him by Lieutenant William Charleton of the said ship	Partly	Dismissed his Majesty's service.
Nov. 4	— Samuel Cappe	Boatswain	Cygnets sloop	Drunkness, neglect of duty, and ill-treating the Carpenter of the said ship	Proved	Dismissed the ship.
Jan. 12 Nov. 11	— Twelve	{ Seamen and Marines }	Different ships	Derfertation	Proved	From two dozen to three hundred lashes.
March 2	1790 Samuel Edwards	Lieutenant	Spider Cutter	Behaving in a tyrannical and oppressive manner, unbecoming the character of an officer, drunkenness, &c.	Fully	Dismissed his Majesty's service, but in consideration of his long and faithful service of 40 years, his age and bodily infirmities, and his good character, the Court recommended him for their Lordships consideration.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
June 12	1790 John Sands Meres	Schoolmaster	Adventure	Mutinous and disorderly behaviour, and stabbing the Clerk of the said ship	Proved -	Found to be insane, and ordered to be kept in custody until he should be disposed of agreeable to the orders of the Admiralty.
July 10	— Joseph Carney	Seaman	Bonetta	Mutinous and seditious behaviour, and charging Lieut. Redmill of the said sloop, with an attempt to commit an unnatural crime	Fully -	Five hundred lashes.
— 19	— James Sharp	Boatswain	La Nymphé	Embezzling stores	Proved -	Dismissed from his employ.
Sept. 13	— * John Cannon	1st Lieut.	Brune	Neglect of duty, disobedience of orders, and drunkenness	Proved -	Dismissed his Majesty's service, but recommended as a proper object to the Admiralty for half-pay.
— 14	— * Edward Power	Gunner	Brune	Taking a pair of pistols out of the ship with an intent to sell them	Fully -	Dismissed the service, and rendering his Majesty, his Heirs, and Successors, and to serve before the mast in any ship the Commander in Chief might appoint.
— 27	— John Nicholls	Boatswain	Meleager	Embezzling stores	Proved -	Dismissed the ship and mulct-ed of his pay.
— 28	— Patrick Stone	Master	Crown	Abusive and unofficer-like behaviour	Partly -	Reprimanded by the Court.

* These two Courts Martial were illegally held, because the Commander in Chief on the station sat as President. See *Case and Opinion*, vol. I. p. 275, 276, 277, 278, 279.

A CHRONOLOGICAL LIST OF TRIALS—continued,

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Oct. 11	1790 John Connor	Boatswain	Hound	Embezzling stores, drunkenness, &c.	Partly	Dismissed the ship.
— 22	William Bligh	Lt. & Com- mander	Bounty armed vessel	Enquiry into the cause and circumstances of her having been seized and taken possession of by part of her Crew, upon her return from the South Seas with Bread Fruit	—	The Commander of the ship and such of the Officers and Crew as had returned to England honourably acquitted—The Court of opinion, that the said vessel the Bounty was violently and forcibly taken from Lieut. Bligh, by Fletcher Christian, and certain other mutineers, on her return from Otaheite, with a large cargo of Bread-fruit-trees, and other useful plants.
—	William Purcell	Carpenter	Bounty	Disobedience of orders, disrespect, and insolent behaviour to Lieut. Bligh	Partly	Reprimanded by the Court.
Nov. 15	John Bishop	Boatswain	Speedy	Drunkenness and using contemptuous and mutinous expressions	Proved	Dismissed his Majesty's service, and rendered incapable of ever serving again.

A CHRONOLOGICAL LIST OF TRIALS—continued.

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When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 16	{ Fra. Underhill } { Richard Fox }	Seamen	Formidable	Having struck Lieut. Loveday and several petty Officers of the said ship, when on duty ashore, and having used mutinous expressions	Proved	Francis Underhill to be hanged at the yard-arm, and Richard Fox who aided and assisted therein, to receive 100 lashes, but the former recommended to mercy in consequence of his very good character.
— 20	James Major	Master	{ Nimble Cutter }	Contempt and disobedience of orders	Proved	Found to be insane, and ordered to be kept in safe custody till disposed of by the Admiralty.
— 29	Michael Baynes	Surgeon's 1st Mate	Lion	Disobedience of orders, and contemptuous behaviour to his superior Officer	Proved	In consideration of his inexperience in the service, only reduced to Third Mate of the said ship.
—	{ Jas. Humphreys } { George Hoad }	Petty Officers	Sheernefs	Abusing and insulting Lieut. Sommerville of the Cumberland, when on duty ashore	Proved	To be disgraced and discharged for ever from his Majesty's service, and to be sent home to England, and confined six months in the Marshalsea prison.
— 30	Abr. Wrack	Seaman	Hound floop	Taking away the Cutter of the said floop with an intent to desert, for theft, &c.	Proved	Five hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Dec. 30	1790 George Biggs	Seaman	Hound	Similar charges to the foregoing	Proved	Five hundred lashes.
— 31	— Wm. Ireland	Boatswain	— rince	Embezzlement of stores	Partly	Mulcted of two months pay, and reprimanded.
Jan. 7	1791 { Joseph Beale John Paine	{ Surgeon Master's Mate	{ Ambuscade	{ Indelicate and indecent behaviour towards each other	{ Partly	{ Surgeon, dismissed his present employ, and Mr. Paine likewise dismissed the ship.
— 8	— Joseph Knowles	Boatswain	Roebuck	Embezzlement of stores	Proved	{ Dismissed his Majesty's service, to forfeit six months pay, and to be imprisoned one year in the Marshalsea.
Feb. 22	— Peter Finley	Boatswain	Ferret sloop	Attempting to embezzle stores	Proved	{ Dismissed the sloop, mulcted of his pay, and to serve before the mast.
— 26	— Samuel Rivans	Master	Dover	{ 'ringing a person on board with merchandize, and concealing him till the goods were landed at Grenada	{ Proved	{ Cashiered and rendered incapable of ever serving again.
March 1	— John Fitzpatrick	Marine	Cumberland	{ Disobedience and making use of seditious expressions to his Captain	{ In part	{ One hundred lashes.
— 4	— Wm. Woods	Seaman	Orion	{ Uttering mutinous and seditious expressions, and contemptuous behaviour to one of the Lieutenants of the said ship	{ In part	{ One hundred lashes.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
March 23	1791 Peter Finley	Late Boat- swain	Ferret	For stabbing Mr. Bruton, Master's Mate of the Ferret	Fully proved	To be hanged at the yard- arm.
— 26	Geo. Blackburn	Mast. Caulker	Hound sloop	Uttering seditious words and disobedience, and contempt to the orders of his superior Officer	In part	Dismissed his present employ, to receive 100 lashes, and to serve before the mast on- board any ship the Com- manding Officer may think proper.
May 11	{ Aungier Viſtor Brock	Surg. Mate	Romulus	Obstructing and striking Mr. Cayley, Master's Mate of the said ship, in the execution of his duty	In part	Dismissed the ship, and to be imprisoned six months in the Marshalsea.
— 13	Pat. M'Kenzie	Seaman	Magnificent	Striking a Midshipman of the said ship, &c.	In part	To receive 150 lashes.
— 18	David Robertson	Midshipman	Adamant	Making use of mutinous ex- pressions and challenging the Lieutenant of Marines	In part	Dismissed the ship, and ren- dered incapable of ever serv- ing again in the Navy.
— 27	{ Benj. George Geo. Onflow	Convicts	Victory	Deserting from Haſlar Hof- pital whither they were sent from the Victory, after hav- ing been pardoned on condi- tion of serving in the fleet	Proved	Two hundred lashes each.
June 16	Arth. Cavenagh	Seaman	Serpent sloop	Making use of mutinous ex- pressions, and disobedience of orders	Proved	Three hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
June 27	1791 Abr. Clarke	Master	Leopard	Disrespect, disobedience of orders, and neglect of duty	Proved	Dismissed the ship.
July 26	— John Gold	Lieutenant	Echo Tender	Neglect of duty, disobedience of orders, &c.	Proved	The Court of opinion, that Lieut. Gold is insane, and therefore adjudge him to be kept in safe custody till the Admiralty shall further dispose of him.
— 27	— Owen Berry	Seaman	Edgar	Mutinous and disobedient behaviour	Partly	Only 100 lashes in consideration of his very good character.
— 29	— Thos. King	Coxwain	Illustrious	Disobedience of orders and mutinous conduct	Partly	One hundred lashes.
Aug. 16	— Edw. Moore	Midshipman	London	Being principally concerned in the writing and circulating anonymous letters, of a seditious nature, to the different ships of the squadron at Spithead	Partly	To be imprisoned one month in the Marshalsea, and severely reprimanded by the Court, and admonished to be more circumspect in his conduct for the future.
— 23	— Js. Fran. Kelly	Midshipman	Phoenix	Making use of abusive language and challenging the Master of the said ship	Proved	In consideration of his youth, only to lose the time he has acquired as rated Mate and Midshipman in the service, and reprimanded by the Court.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Aug. 29	1791 Chas. Williams	Midshipman	Lion	Not coming on deck to keep his watch, and disobedience of orders	Proved	Imprisoned in the Marshalsea one year, and rendered incapable of ever serving in his Majesty's Navy.
Sept. 19	John Rowe	Seaman	Cullod	Disobedience of orders, neglect of duty, and contempt to his superior Officer	Proved	To be hanged, but recommended to the Admiralty for mercy.
Nov. 5	John Brown	Boatswain	Thunderer	Embezzling stores	Proved	Dismissed from his employ.
— 14	David Smith	Master	Huffar	Prevaricating in his evidence on the trial of Capt. Henry Trollope	Proved	In consideration of his age and infirmities, the Court mitigated his punishment to one month's imprisonment in the Marshalsea.
— 19	Jonas Boulton	Gunner	Brune	Fraudulent behaviour and drunkenness	Proved	Dismissed the service, and rendered incapable of ever serving his Majesty's, his Heirs and Successors.
— 14 22	Henry Trollope	Captain	Huffar	Several charges exhibited against him by Lieutenant G. S. Harris of said ship	Partly	Reprimanded by the Court.
July 18 Dec. 30	Eleven	Seamen & Marines	Different ships	Desertion	Proved	From fifty to three hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Jan. 5	1792 Jas. M'Donald	Seaman	Blanche	Abusing and insulting Lieut. England of the said ship, on shore, and striking a Midshipman belonging to her	Fully proved	To be hanged.
— 27	— Joseph Kay	Surg. Mate	Serpent sloop	Drunkenness	Proved	Dismissed the ship.
Feb. 17	— { Aug. Griffin Merida	Gunner	Bonetta sloop	Defertion and disobedience of orders	In part	In consideration of favourable circumstances, only reprimanded by the Court.
— 24	— Daniel Clark	Gunner's Mate	Helena sloop	Attempting to embezzle stores out of Port Royal Yard	Proved	But in consideration of his age and long service, and former good character, only to receive 50 lashes.
March 3	— { James Davidson Thos. Braid	Boatswain Boatswain's Yeoman	Hebe	Embezzling cordage	Proved	The Boatswain mulcted six months pay, and reprimanded by the Court. Thomas Braid to receive 50 lashes.
— 12	— Geo. Stancombe	Gunner	Helena	Insolent and disrespectful behaviour to Lieut. Brooks of the said sloop	Proved	Dismissed the ship.
— 15	— { Wm. Rowe Rich. Branton John Short	Seamen	Leander	A robbery committed on board the said ship	Proved	In consideration of their long confinement and general good character, to receive only 12 lashes.
— 27	— James Malcolm	Lieutenant	Busy Cutter	Several charges exhibited agt him by Richard Walth. Midshipman of the said Cutter	Proved	Dismissed his Majesty's service.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Port of Sentences.
April 7	1792 Rich. Walsh	Late Midshipman	Buffy Cutter	Drunkenness, mutiny, contempt, and disobedience of orders	In part	Reprimanded by the Court for the last article of charge, and acquitted of the former ones.
—18, 19	Hamilton Van-cover Flack	Midshipman	Buffy Cutter	Several charges exhibited against him by James Malcolm, late Commander of the said Cutter	Not proved	Acquitted.
—18, 19	Rich. Walsh	Midshipman	Buffy Cutter	Several charges exhibited against him by James Malcolm, late Commander of the said Cutter	In part	But as the impropriety of his conduct has in a great measure proceeded from a total relaxation of discipline on board the Cutter, he is only adjudged to be dismissed his Majesty's service, and for ever rendered incapable of serving his Majesty.
July 30	James Allen	Clerk	Medusa	Insolent and mutinous behaviour	Proved	Broke and rendered incapable of ever serving again, and to receive 100 lashes.
Aug. 1	Rich. Watson	Boatswain	Edgar	Embezzlement of stores	Proved	Dismissed his Majesty's service.
—25	R. Stiles Tremlett	Midshipman	Andromeda	Neglect of duty	In part	Severely reprimanded, and to be rendered ineligible to any promotion in his Majesty's naval service, for the space of 12 months.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Sept. 4	1792 { Fred. Liardet Rice Williams }	Lieutenant Marines Purser }	Ariel sloop	Unofficer-like behaviour	Proved -	The Lieutenant of Marines reduced to half-pay, and the Purser dismissed, and rendered incapable of ever serving again.
— 12—18	{ Thos. Ellifson Mich. Byrne Jof. Coleman Chas. Norman T. Mackintosh Peter Haywood Isaac Morris John Milward Wm. Muspratt Thos. Birkett }	Seamen }	Bounty armed vessel - }	For running away with the ship in the South Seas, and deserting his Majesty's service	Proved ag*. fix -	Haywood, Morris, Milward, Muspratt, Birkett, and Ellison adjudged to suffer death, but the two first recommended to mercy. Coleman, Norman, Mackintosh, and Byrne were acquitted and discharged.
Nov. 14, 15	— John Guyon	Lieutenant	Hound sloop	Cruel and unofficer-like behaviour to a seaman of the said ship	Proved -	Dismissed his Majesty's service, but the Court in consideration of his very good character, recommended him to the protection of the Lords of the Admiralty.
Jan. 11 -	1793 { J. Piper, alias Jof. Pearson }	Seaman	Charon -	Defertion	Proved -	One hundred lashes.

A CHRONOLOGICAL LIST OF TRIALS—continued.

When tried.	Names of Persons tried.	Qualities.	Ships.	Nature of Charges or Offences.	How proved.	Purport of Sentences.
Feb. 2. 4, 5 1793	{ James Hardy Js. Shadforth }	Captain Master }	Otter floop	Different Charges	In part	The Captain acquitted, but admonished by the Court to pay more attention in future to the printed instructions, and the charges considered to be generally frivolous and malicious. The Master found guilty of drunkenness and contempt, and therefore dismissed his Majesty's service.
[F 4] April 6	{ Rob. Brown John Gordon }	Pilots	Fox	{ Running the said ship on the Gunfleet Sand }	Proved	Both rendered disqualified from hereafter taking charge of any of his Majesty's ships, and to be imprisoned six calendar months in the Marshalsea.



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I N D E X

TO THE PRECEDING

CHRONOLOGICAL LIST

OF

NAVAL COURTS MARTIAL.

Names.	Years.	Names.	Years.
A		Bryan, John	1762
ACKMAN, Samuel	1750	Brenan, Patrick	—
Allen, J. C.	1754	Brown, Andrew	1765
Arbuthnot, Matthew	1755	Bourgeois, Louis	—
Aldred, James	1759	Boyd, Samuel	—
Andrews, William	1779	Boyd, Samuel	1766
Aitkin, George	1780	Bruin, Thomas	1779
Anderfon, James	—	Signal, James	1775
Agnew, Alexander	1781	Beale, Robert	—
Argent, Stephen	—	Bishop, Thomas	—
Anderfon, Patrick	1783	Burwood, Matthew	1777
Alexander, Charles	1784	Brown, John	—
Affleck, Thomas	—	Bond, Francis	—
Anderfon, Joseph	1788	Bear, John	—
Ambuscade, ———	1789	Brown, ———	1778
Allen, James	1792	Bellew, Henry	—
		Brerton, William	—
B.		Biggs, Richard	1779
Billen, John	1755	Brown, James	—
Best, William	1756	Brady, William	1780
Burling, William	—	Bonner, ———	—
Bicks, Henry	1757	Botteler, Philip	—
Brereton, William	1758	Baines, K.	—
Blake, John	—	Brofs, Benjamin	—
Bunce, Joseph	1759	Brannon, William	1781
Bird, Richard	—	Busby, Joseph	—
Beake, Robert	—	Buchanan, Alexander	—
Butler, James	1760	Bampton, Richard	1782
Burgh, John	—	Burn, Nicholas	—
Bailey, Thomas	—	Bannister, James	—
Brown, William	—	Barret, Francis	—
Burden, Richard	1761	Bryant, John	1783
Bulkeley, Edward	—	Barnsley, John	—
Brown, John	—	Burne, John	—
Brown, William	1762	Bryan, John	—
Bitten, Matthew	—	Bryant, John	1784
Beazely, John	—	Broughton, William	1785

Names.	Years.	Names.	Years.
Edward Barber	1785	Crosby, Nathaniel	1778
Blow, Samuel	—	Clifton, William	1779
Bullen, John	1787	Clarke, Richard	1780
Bennet, John	—	Clarke, John	—
Biddoe, Edward	1788	Cowley, Henry	—
Bailey, John	1789	Cooke, John	—
Bligh, William	1790	Carrol, Archibald	1781
Bishop, John	—	Christian, Charles	1782
Baines, Michael	—	Coultson, David	—
Biggs, George	—	Caton, Thomas	—
Beale, Joseph	—	Craven, Charles	1783
Blackburne, George	1791	Collins, Constantine	—
Brooke, A. V.	—	Cobby, Michael	—
Berry, Owen	—	Callaghan, Eugene	—
Brown, John	—	Conquer, John	1784
Byrn, Michael	1792	Coming, John	—
Birkitt, Thomas	—	Connory, James	1786
Brown, Richard	1793	Callaghane, Eugene	—
		Croxton, Thomas	1787
C.		Coupland, George	—
Clarke, Edward	1755	Coffin, Isaac	1788
Carter, James	1757	Clarke, G. D.	—
Carter, James	1759	Cottman, George	1789
Cleaver, William	—	Cappe, Samuel	—
Collins, James	1760	Caulfield, —	1790
Cumming, —	—	Carney, Joseph	—
Cooney, John	—	Cannon, John	—
Cornish, James	1761	Connor, John	—
Campbell, John	—	Cavanaugh, C.	1791
Corbett, Anthony	1762	Clarke, Abraham	—
Clarke, Philip	—	Clarke, Daniel	1792
Campbell, James	—	Coleman, James	—
Chilton, Robert	—		
Cooke, James	1766	D.	
Cotton, Rowland	—	Dawson, Charles	1761
Collins, Richard	—	Dowling, John	—
Carter, John	1769	Dugdale, Robert	1763
Canty, Denis	1771	Dickens, Benjamin	—
Coulson, George	1772	Dees, Walter	1767
Craig, Thomas	1776	Davinson, James	1770
Christian, T. P.	—	Dennis, Lieutenant	1772
Curry, Robert	1777	Dunari, George	—
Chamberlain, —	—	Drummond, James	1774
Cox, John	—	Donadieu, —	—
Collingwood, C.	—	Douglas, Stair	1777
Cunningham, A.	—	Duckworth, James	—
Chapman, John	—	Dodd, Edward	—
Clarke, Richard	1778	Dominey, William	—
Cort, Richard	—	Donovan, Thomas	1778
Carmichael, J.	—	Delgarno, Maurice	—
Connell, Hugh	—	Devereux, Robert	1780

Names.	Years.	Names.	Years.
Damarel, John	1782	Golden, T.	1755
Dickenfon, Thomas	—	Gregory, Benjamin	1756
Dagge, Abel	—	Graves, Thomas	1757
Daniel, Richard	1785	Gordon, Charles	1759
Duffield, George	1788	Gazard, John	—
Davis, Edward	—	Goff, Samuel	1761
Dawfon, George	1789	Goodinson, N.	—
Davidfon, James	1792	Goodinson, N.	—
E.		Garbett, Robert	1762
Eames, Edward	1755	Garrow, Joseph	1765
Ellis, Samuel	1760	Green, Robert	1771
Every, Dennis	1763	Gibbs, Anthony	—
Edwards, James	1765	Graves, Thomas	1775
Efcott, George	1779	Gordon, Francis	—
Emes, William	1781	Graves, John	1776
Evans, William	—	Goodwin, Thomas	1777
Emery, John	1782	Gold, Francis	1778
Edwards, Benjamin	—	Greig, David	—
Ellifon, Thomas	1792	Gibfon, T.	1780
F.		Gilchrist, James	—
Fitzpatrick, T.	1752	Garnier, William	1781
Fuller, Thomas	1755	Graves, Samuel	—
French, Francis	1756	Ground, William	—
Fairbrother, W.	1761	Gilbert, Douglas	1782
Friar, Henry	—	Glover, Bates	—
France, James	—	Grant, T.	1783
Forfter, William	1762	Gerrard, Matthew	1787
Forke, John	1766	George, Benjamin	1791
Fitzherbert, James	1770	Gold, John	—
Finmore, Robert	1771	Guyon, Matthew	1792
Farmer, George	1766	Gordon, John	1793
Foster, Ford	—	H.	
Fourneaux, T.	1778	Hook, Robert	1750
Finftey, T.	1780	Hobb, William	1756
Ferris, Alexander	1781	Howfon, William	1759
Finlay, Luke	1782	Harris, John	1760
Follie, John	1784	Hadley, John	1761
Fitzpatrick, James	1789	Harvey, J.	—
Fotheringham, ———	—	Hogg, George	—
Finley, Peter	1791	Higgins, William	—
Fitzpatric, John	—	Herriet, John	1762
Finley, Peter	—	Hill, Samuel	1771
Flach, H. V.	1792	Hunter, William	1775
G.		Henry, Thomas	1776
Griffin, Robert	1750	Hall, William	—
Gardner, ———	1752	Hodges, William	1777
		Hills, Richard	—
		Halsted, Alexander	1778
		Hodges, Richard	—

Names.	Years.	Names.	Years.
Hailes, John	1778	Johns, Edward	1785
Hewlitt, William	—	Johns, John	1786
Hill, John	—	John, Edward	—
Hallam, Samuel	—		
Hawkes, William	—	K.	
Hooker, Thomas	—		
Hudson, T. C.	1779	Kittoe, George	1760
Hamilton, Charles	1780	Kell, James	1762
Hilliard, William	—	Knox, ———	1778
Halliday, Charles	—	Knocker, Joseph	—
Hayes, George	1781	Keppel, Hon. A.	1773
Harman, Laighty	—	King, Philip	—
Hill, Daniel	—	Kearne, William	1789
Hallum, John	—	Knowles, Joseph	1791
Hurst, John	—	King, Thomas	—
Hitchcock, T.	1782	Kelly, James	1791
Hoy, James	—	Kay, Joseph	1792
Hobbs, Richard	1783		
Haggister, J.	—		
Holland, James	1784	L.	
Hicks, John	1785		
Henderfon, W.	1788	Legge, Julian	1756
Henly, H.	1789	Legge, George	1758
Humphries Hoade, George	1790	Lewis, William	1759
Haywood, Peter	1792	Laws, William	1760
		Lloyd, ———	—
I.		Luter, Henry	1761
		Levi, Nicholas	—
Irwine, Peter	1782	Leake, Thomas	1763
Inglefield, J. N.	1783	Lee, John	—
Ireland, Robert	1786	Lynn, Thomas	—
Ingate, John	1789	Lockyer, B.	1777
Ireland, William	1790	Lorrington, John	1778
		Lary, John	1780
J.		Lewis, William	1782
Jasper, ———	1754	Larimore, Adam	—
Jeffop, Edward	—	Layl, John	—
Jackson, H.	1758	Lee, Benjamin	1783
Jones, Owen	1760	Lynn, J. B.	1785
Johnston, Peter	1761	Leake, Samuel	1788
Jacobs, J.	1762	Lakes, ———	—
Jones, Owen	1770	Lucas, John	—
Jones, Richard	1771	Lidiardet, J.	1789
Jones, Edward	1777		
Johnstone, J.	1778		
Jackson, Samuel	1779	M.	
Jamison, John	1780		
Joseph, John	—	M'Kenzie, William	1755
John, Richard	1783	M'Kenzie, William	—
Jones, William	—	Meeks, William	1756
Jones, Leonard	1784	Mansfield, James	1757
James, W.	1785	Morris, William	1759

Names.	Years.	Names.	Years.
Millson, Joseph	1760	Nanster, —	1761
M'Intosh, —	1761	Newton, G.	—
M'Dougal, J.	—	Newson, William	1762
M'Gourk, J.	—	Norbury, E.	1778
Marbeux, Daniel	—	Nicholson, —	1779
Magrath, Charles	—	Newbury, R.	1781
Mathews, James	—	Norman, Charles	1792
Mundell, James	—		
Morgan, John	1762		
Marlin, George	—	O.	
M'Leigh, J.	—		
Mallet, John	—	Oldfield, P.	1761
Moses, J.	1762	Orde, John	1762
M'Callum, A.	1763	Owen, W.	—
Morris, William	—	Odnell, T.	1768
M'Donald, H.	1767	Owen, James	1772
M'Carter, Daniel	1769	Ogilon, —	—
Malby, William	1775	Owen, W.	1773
Mallandine, James	1777	Osmond, James	1782
Molloy, A. P.	—	Odbar, S.	1783
M'Gannon, B.	—	Oldham, J.	1784
M'Lelan, John	1779	Onslow, G.	1791
Merrick, C.	1781		
M'Carty, John	—	P.	
Mickleburgh, William	—		
Market, Augustus	1782	Pike, James	1752
Morgan, David	—	Powlett, James	—
Mullogh, T.	1783	Portion, T.	1754
Mitchell, William	—	Paulett, Lord H.	1755
Moore, Alexander	—	Paine, Thomas	—
Mitchell, John	—	Phippard, W.	1756
Moffat, Thomas	1785	Paine, Philip	1757
M'Loughin, John	1786	Pye, Thomas	1758
M'Pherson, Francis	1788	Pomeroy, Edward	1759
Meres, John S.	1790	Powell, Richard	1760
Major, James	—	Powlett, Francis	1761
M'Kenzie, P.	1791	Parker, Thomas	1762
Moore, Edward	—	Pidgeon, John	1771
M'Donald, James	1792	Palmer, John	1772
Mereda, G.	—	Pendirgast, John	1774
Malcolm, James	—	Pukersgill, Richard	—
Mackintosh, Thomas	—	Pearson, James	—
Morris, Isaac	—	Pollard, George	—
Muspratt, William	—	Prescott, William	1778
Millward, John	—	Pearce, William	—
N.		Palifer, Sir Hugh	1779
Nightingale, —	1753	Prewal, Joseph	—
Nelson, Henry	1758	Pearsons, Richard	1780
Nicholson, —	1761	Perkins, William	1781
		Petrie, Henry	—
		Tainter, William	—

Names.	Years.	Names.	Years.
Potter, Leonard	1781	Scrope, ———	1753
Perry, Henry	1782	Short, ———	1754
Price, Charles	—	Smith, Thomas	1755
Power, Henry	—	Spencer, T.	—
Price, Marmaduke	—	Steel, Richard	1759
Power, Lawrence	1783	Smith, William	—
Pinfold, Charles	—	Slater, Thomas	1760
Powell, Morgan	—	Shore, John	1761
Prime, John	1784	Smith, Samuel	—
Pynne, Michael	1786	Sandam, Lieut.	—
Pooley, Edward	1787	Spanton, Solomon	—
Pritchard, Samuel	1789	Symmons, S.	1762
Power, Edward	1790	Spence, William	1762
Purcell, William	—	Savern, Benjamin	1769
Paine, John	1791	Styles, Jeremiah	1770
R.		Scott, James	1775
Rooke, James	1752	Stanford, William	1776
Rawlinson J.	1755	Shuttleworth, Ch.	—
Ruffel, William	1756	Seaton, ———	1777
Read, R.	—	Scott, James	1778
Rees, Cary	1762	Swift, William	—
Robertson, John	1765	Strange, William	—
Rogerson, W.	1777	Stubald, James	—
Rutter, ———	—	Scott, James	—
Reynolds, F.	—	Savage, T. B.	1780
Russell, William	1778	Stone, James	1781
Ray, Henry	1780	Swaddle, John	—
Rhodes, George	1781	Smith, Thomas	—
Russell, David	—	Stewart, George	—
Ritchie, Robert	1783	Smith, Edmund	—
Rofs, William	—	Sacart, John	—
Rickinson, P.	1784	Symmonds, Richard	1782
Rind, Thomas	—	Stanhope, Michael	1783
Richardson, ———	—	Shields, James	—
Rochfort, John	—	Stephenfon, P.	1784
Rambler, ———	1785	Smith, Car.	1785
Rofs, John	1787	Sevan, John B.	—
Rutherford, G.	—	Sullivan, James	—
Richards, John	—	Stephens, George	1786
Rogers, N.	1788	Stamp, William	1789
Revans, S.	1791	Sharp, James	1790
Robertson, D.	—	Stone, Pat.	—
Rowe, John	—	Stancombe, ———	1792
Rowe, William	1792	T.	
S.		Thompson, William	1759
Somerville, George	1750	Thwaites, James	1760
Slater, Peter	1751	Thorne, Samuel	1761
Saunders, Thomas	1752	Titchborne, ———	1771
		Turner, William	1777
		Timms, A.	1778

Names.	Years.	Names.	Years.
Thompson, John	1779	Williams, John	1772
Turner, Ch.	—	Wilkins, William	1775
Taylor, John	1780	Wauchope, Neil	1776
Truscot, Pat.	1781	Warman, Edward	1778
Thompson, C.	1787	Wallace, John	—
Thackeray, —	1789	Wilson, H.	1780
Tremelete, —	1792	Wallace, Sir James	—
U.		Wood, James	—
Underhill, Francis	1790	Webber, John	—
V.		Watson, C.	—
Vincent, N.	1758	Wickham, S.	1781
Vaughan, George	1760	Watson, Isaac	1782
Vaughan, Charles	1779	Welsh, William	1783
Vale, William	1787	Williams, Richard	—
W.		Wardell, John	—
Watkins, Richard	1757	Wilson, Thomas	1784
White, N.	—	Wilson, William	1785
White, William	1759	White, John	1787
Wilson, Pat.	—	White, Pat.	—
Walsh, Thomas	1761	Wiley, William	1788
Wynn, John	—	Wardrope, David	—
Whitfield, Alex.	1762	Wall, William	—
Wells, Giles	1770	Withie, John	—
		Wrack, Abraham	1790
		Wood, William	1791
		Williams, Ch.	—
		Walsh, Richard	1792
		Watson, Richard	—
		Williams, R.	—

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THE END.

M'Arthur, John,

Principles and practice of naval and military courts martial with an
appendix, illustrative of the subject

Bd.: 2

London 1806

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